

No. 94-197-CFX  
Status: GRANTED

Docketed:  
July 28, 1994

Title: Eloise Anderson, Director, California Department of  
Social Services , et al., Petitioners  
v.  
Deshawn Green, Debby Venturella and Diana P.  
Bertolli, etc.

Court: United States Court of Appeals for  
the Ninth Circuit

Counsel for petitioner: Garelis, Theodore

Counsel for respondent: Kurtz, Sarah E., Gallagher, Grace A.

080294 ck. rec'd

Entry	Date	Note	Proceedings and Orders
1	Jul 28 1994	G	Petition for writ of certiorari filed.
2	Aug 26 1994	G	Motion of United States Justice Foundation for leave to file a brief as amicus curiae filed.
3	Aug 26 1994		Brief of respondents Deshawn Green, et al. in opposition filed.
4	Aug 29 1994	G	Motion of Washington Legal Foundation for leave to file a brief as amicus curiae filed.
5	Aug 29 1994		LODGING consisting of four Health and Human Services letters submitted from counsel for Washington Legal Foundation
6	Aug 31 1994		DISTRIBUTED. September 26, 1994 (Page 134)
7	Sep 21 1994	X	Reply brief of petitioners filed.
8	Oct 3 1994		Motion of United States Justice Foundation for leave to file a brief as amicus curiae GRANTED.
9	Oct 3 1994		Motion of Washington Legal Foundation for leave to file a brief as amicus curiae GRANTED.
11	Oct 3 1994		REDISTRIBUTED. October 7, 1994 (Page 28)
12	Oct 7 1994		Petition GRANTED. The brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, November 16, 1994. The brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 13, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 29, 1994. Rule 29.2 does not apply. *****
13	Nov 14 1994		Record filed.
		*	Partial record proceedings United States Court of Appeals for the Ninth Circuit.
14	Nov 14 1994		SET FOR ARGUMENT TUESDAY, JANUARY 17, 1995. (3RD CASE).
17	Nov 14 1994		Brief amicus curiae of Pacific Legal Foundation filed.
15	Nov 16 1994		Brief of petitioners Eloise Anderson, et al. filed.
16	Nov 16 1994		Joint appendix filed.
18	Nov 16 1994		Brief amici curiae of Minnesota, et al. filed.
19	Nov 16 1994		Brief amici curiae of Mountain States Legal Foundation, et al. filed.
22	Nov 16 1994		Brief amici curiae of Washington Legal Foundation, et al.

No. 94-197-CFX

Entry	Date	Note	Proceedings and Orders
			filed.
20	Nov 18 1994		CIRCULATED.
21	Nov 18 1994		Record filed.
		*	Original record proceedings United States District Court for the Eastern District of California (BOX)
25	Dec 12 1994	X	Brief amici curiae of NOW Legal Defense and Education Fund, et al. filed.
23	Dec 13 1994	X	Brief of respondents Deshawn Green, et al. filed.
24	Dec 13 1994		LODGING consisting of twelve copies of the state petitioners'waiver request submitted by counsel for the respondent.
26	Dec 13 1994	X	Brief amicus curiae of Law Professors filed.
27	Dec 13 1994	X	Brief amicus curiae of American Bar Association filed.
28	Dec 13 1994	X	Brief amici curiae of Catholic Charities U.S.A., et al. filed.
29	Dec 13 1994	X	Brief amicus curiae of National Welfare Rights and Reform Union filed.
30	Dec 13 1994		LODGING consisting of ten bound sets of documents submitted by counsel for amicus National Welfare Rights and Reform Union
31	Dec 29 1994	X	Reply brief of petitioners filed.
32	Jan 17 1995		ARGUED.

(1)  
No. **94 197 JUL 28 1994**

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In The  
**Supreme Court of the United States**  
October Term, 1994

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ELOISE ANDERSON, INDIVIDUALLY AND IN HER  
OFFICIAL CAPACITY AS DIRECTOR, CALIFORNIA  
DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA  
DEPARTMENT OF SOCIAL SERVICES; AND  
RUSSELL S. GOULD, DIRECTOR, CALIFORNIA  
DEPARTMENT OF FINANCE,

*Petitioners,*

vs.

DESHAWN GREEN, DEBBY VENTURELLA, AND  
DIANA P. BERTOLTT, ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

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**Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED FOR REVIEW**

May a state limit a new resident's AFDC benefits to the level of benefits received or receivable in the state of prior residence for a period of a year, with full benefits to be provided thereafter?

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No. \_\_\_\_\_

In The

**Supreme Court of the United States**

October Term, 1994

ELOISE ANDERSON, INDIVIDUALLY AND IN HER  
OFFICIAL CAPACITY AS DIRECTOR, CALIFORNIA  
DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA  
DEPARTMENT OF SOCIAL SERVICES; AND  
RUSSELL S. GOULD, DIRECTOR, CALIFORNIA  
DEPARTMENT OF FINANCE,

*Petitioners,*

vs.

DESHAWN GREEN, DEBBY VENTURELLA, AND  
DIANA P. BERTOLTT, ON BEHALF OF THEMSELVES  
AND ALL OTHER SIMILARLY SITUATED,

*Respondents.*

**Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

**PETITION FOR WRIT OF CERTIORARI**

The Petitioners, Eloise Anderson, Director, California  
Department of Social Services, California Department of  
Social Services and Russell S. Gould, Director, California  
Department of Finance<sup>1</sup>, ("California") respectfully

<sup>1</sup> Mr. Gould was appointed as the Director of the Depart-  
ment of Finance on August 1, 1993, and as such, is the successor



request this Court to issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this action on April 29, 1994.

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### OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth circuit in *Green v. Anderson*, \_\_\_ F.3d \_\_\_ (9th Cir. 1994) is reproduced in the Appendix at A1. The order of the trial court granting the respondents' motion for preliminary injunction and referred to in the Ninth Circuit opinion is also reproduced in the Appendix at A3. 811 F.Supp 516 (E.D. Cal. 1993).

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### JURISDICTION

On April 29, 1994, the United States Court of Appeals for the Ninth Circuit ("the Ninth Circuit") issued its opinion affirming the preliminary injunction of the United States District Court ("the District Court") that a California welfare statute operates as a penalty on migration and therefore must be subjected to strict scrutiny. This Court has jurisdiction to review, by way of writ of certiorari, the judgment or decree of the Court of Appeals. 28 U.S.C. § 1254(1).

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in interest to Thomas Hayes, who was named in the original pleadings. Mr. Gould is automatically substituted as a party in place of Mr. Hayes pursuant to the provisions of Rule 25(d) of the Federal Rules of Civil Procedure.

### RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Fourteenth Amendment:  
Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Welfare and Institutions Code:

Section 11450.03.

"(a) Notwithstanding the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450, families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with paragraph (1) of subdivision (a) of Section 11450, not to exceed the maximum aid payment that would have been received by that family from the state of prior residence.

"(b) This section shall not become operative until the date of approval by the United States Secretary of Health and Human Services necessary to implement the provisions of this section so as to ensure the continued compliance of the state plan for the following:

"(1) Title IV of the federal Social Security Act (Subchapter 4 (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code).

"(2) Title IX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code)."

(Added by Stats 1992, c. 722 (S.B.485), § 37.5 eff. Sept. 15, 1992.)

### STATEMENT OF THE CASE

In 1992, the California Legislature enacted Welfare and Institutions Code section 11450.03 ("the Statute") as a means to reduce welfare expenditures. Impetus for the statute came from the existence of continuing, severe economic and fiscal problems in California (Declaration of Dennis Hordyk, "Hordyk Declaration," A21)<sup>2</sup> and the California constitutional provision mandating a balanced budget.<sup>3</sup> Failure to implement the Statute was expected to result in additional unbudgeted state General Fund costs in the AFDC program of 8.4 million dollars in fiscal year 1992-93 and 22.5 million dollars in fiscal year 1993-94. (Hordyk Declaration, A22.)

The Statute became effective upon approval by the United States Secretary of Health and Human Services

<sup>2</sup> All evidentiary materials reproduced in the Appendix were presented to the trial court.

<sup>3</sup> "Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided." (California Constitution, article IV, section 12(a).)

necessary to implement the provisions of this section.<sup>4</sup> The Secretary gave approval on October 29, 1992, and the California Department of Social Services began applying the residency limitation shortly thereafter. (District Court Order, A4.)

A complaint for declaratory and injunctive relief ("complaint") was filed on December 21, 1992. The complaint named the California Department of Social Services, and the directors of the California Departments of Social Services and Finance as defendants. Plaintiffs are a class of California residents who have applied or will apply for benefits on or after December 1, 1992 and who have not resided in California for twelve consecutive months immediately preceding their application for aid. Jurisdiction was conferred on the District Court by 28 U.S.C. § 1343(a)(3). This suit was brought pursuant to 28 U.S.C. § 1983. The gist of plaintiffs' action was that the Statute violated various provisions of the United States Constitution and the constitutional right to travel.

The District Court issued a temporary restraining order on December 22, 1992, enjoining California from implementing the provisions of the Statute pending a hearing on plaintiffs' request for a preliminary injunction.

At the hearing on plaintiffs' request for a preliminary injunction, plaintiffs sought to block application of the residency requirement as provided for in the Statute. By

<sup>4</sup> On July 13, 1994, the Ninth Circuit vacated the federal waivers necessary to implement the provisions of this section. *Beno v. Shalala*, \_\_\_ F.3d \_\_\_ (No. 93-16411). California anticipates filing a petition for rehearing.



declaration, plaintiffs averred that they suffered irreparable injury because, under the Statute, they would not receive the same AFDC grant that they would have received if they had already resided in California for the preceding twelve months. Plaintiffs averred they were fleeing abusive relationships rather than seeking higher welfare grants in migrating to California. (District Court Order, A5.)

California demonstrated the severe budget deficit facing the state – so severe that California will have no reserve available to cover the costs of unforeseen events. (Hordyk Declaration, A21.) California also showed that failure to implement the Statute would result in additional, unbudgeted state General Fund costs in the AFDC program of 8.4 million dollars in fiscal year 1992-93, and 22.5 million dollars in fiscal year 1993-94. (Hordyk Declaration, A22.) Because of the severity of the budget deficit, there were no funds appropriated by the 1992-93 state budget to pay the additional costs resulting from a failure to implement the Statute. (Hordyk Declaration, A22.)

The hearing on plaintiffs' request for a preliminary injunction was held on January 28, 1993. The District Court ruled from the bench, and issued the injunction. (District Court Order, A3.)

The District Court found that the Statute implicated a constitutional right to freedom of travel or migration, that a strict scrutiny analysis was therefore required to review the Statute, that California could not show a compelling reason for the Statute, and that plaintiffs had demonstrated they would suffer irreparable injury if the injunction were not granted. (District Court Order, A3.)

California filed an appeal from the District Court's order. On April 29, 1994, the Ninth Circuit summarily affirmed the District Court's order. (Ninth Circuit Order, A2.) On June 13, 1994, the Ninth Circuit corrected its previous order and ordered that its April 29, 1994 order be published. The correction was not substantive. (Ninth Circuit Order, A2.)

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### REASONS FOR GRANTING THE PETITION

A petition for writ of certiorari is granted by this Court " . . . when there are special and important reasons therefore." Supreme Court Rule 10.1. Review may be granted when a United States Court of Appeals has decided an " . . . important question of federal law which has not been, but should be, settled by this Court. . . . " *Id.*

Thirty-five years ago, this Court struck down a state law that made new residents *ineligible* for welfare benefits for a year because it created an "invidious classification" that was at odds with the constitutional right of interstate migration. *Shapiro v. Thompson*, 394 U.S. 618, 629, 633 (1969). Three years later, this Court overturned a state law *disqualifying* new residents from voting for a year after moving. *Dunn v. Blumstein*, 405 U.S. 330 (1972). Two years after that, this Court voided a state residency requirement that made new county residents *ineligible* for nonemergency medical care at county expense for a year because it penalized migration. *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974).



More than a decade later, this Court struck down several state laws that created *permanent* distinctions based on the length of state residency. *Zobel v. Williams*, 457 U.S. 55 (1982) (size of payments from oil revenues dependent upon years of residence in Alaska); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985) and *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986) (preferences for veterans based on length of state residency).

In none of these prior cases, however, has this Court decided, or even given guidance to the lower courts about how to answer the question this case squarely presents: Does a statute that is not intended to deter interstate migration and, in fact, does not deter migration, nonetheless penalize persons who migrate because it leaves new residents at the same level of welfare benefits they would have received in their state of prior residence for a limited period of time?

This Court should seize this opportunity to provide essential guidance to the states and the lower courts on this important question of constitutional law.

# I

## THE STATUTE DOES NOT OPERATE AS A PENALTY ON MIGRATION AND THEREFORE SHOULD BE SUBJECTED TO A REASONABLE BASIS ANALYSIS

Within the broad parameters of federal AFDC requirements, states have a great deal of discretion in determining the standard of need and the level of benefits. 42 U.S.C. §§ 601, et seq. *Largo v. Sunn*, 835 F.2d 205, 208 (9th Cir. 1987). It is constitutionally permissible both

to establish a benefit level below the standard of need and to set benefits which will encourage gainful employment. It is also constitutionally permissible to disregard family size in setting benefit levels. *Dandridge v. Williams*, 397 U.S. 471, 480, 483 (1970). Title 42 U.S.C. § 601 states that the purpose of the AFDC program is to, in part, " . . . furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State. . . . " Thus, to the extent that the Statute operates as a reduction of benefits, the Statute is constitutionally permissible.

In *Shapiro v. Thompson*, 394 U.S. 618 (1969), this Court held that legislation which denied welfare assistance to new residents of less than one year duration was constitutionally impermissible, as such legislation chilled the right to engage in interstate travel.

Although at first glance, *Shapiro* would seem to bar any restriction on the right to travel, that reading of the case is unjustified. In a footnote, this Court indicated:

"We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel." (Emphasis original.)

(*Shapiro*, 394 U.S. at 638, fn 21.)

Therefore, the issue is not whether the Statute deters travel but whether, in the absence of a compelling interest, the Statute imposes a penalty upon the exercise of the constitutional right to travel.

In this case, the Statute's impact on travel is incidental to its purpose of reducing state expenditures. As to the level of AFDC benefits, persons impacted by the Statute are placed in a position identical to that which they occupied before departing their state of former residence.<sup>5</sup> The Statute does not provide a penalty by depriving new residents of the basic necessities of life. Persons subject to the Statute receive the same amount of AFDC benefits which was constitutionally permissible in their state of prior residence. Moreover, there is no two-tier system for either Medicaid benefits (Medi-Cal in California) or for Food Stamps. In fact, for every three dollars on AFDC grant is reduced by operation of the Statute, Food Stamps are increased by approximately one dollar. (See Declaration of Michael C. Genest ("Genest Declaration" A26.)) In addition, all California AFDC recipients may be entitled to a Special Needs Allowance, including an allowance for homeless assistance. (Genest Declaration, A26.) There is simply a delay in the receipt of the same level of benefits as persons who have lived in California for one year or more. Thus, the impact of the Statute is

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<sup>5</sup> "In both 1980 and 1985 all but five of the states had a cost of living within ten percent of the national average . . . when all states are considered together, the variation in AFDC benefits is four times larger than the variation in the cost of living." Peterson, et al., *Welfare Magnets* (The Brookings Institute, 1990) p. 11. Thus, there is not a significant relationship between a state's cost of living and its welfare payments.

nothing like that which would result from the statutes at issue in *Shapiro*, *Memorial Hospital* and *Dunn*.

The statute does not provide for an outright denial of eligibility for benefits such as that condemned in *Shapiro*, but is instead more akin to the residence requirement imposed by states on new residents wanting to qualify for in-state tuition which this Court has upheld. *Vlandis v. Kline*, 412 U.S. 441, 453 (1973); *Starns v. Malkerson*, 326 F.Supp 234 (D. Minn. 1970), aff'd on appeal, 401 U.S. 985 (1971). So long as the new resident is not deprived of an opportunity to establish residency so as to gain the benefit of in-state tuition, those benefits may be delayed consistent with the United States Constitution.

Thus, because the statutes at issue in *Shapiro* provided for the outright denial of welfare benefits and California's Statute does not affect eligibility, the Statute does not penalize the right to travel to the extent required to trigger a strict scrutiny analysis. This Court, in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 at 258 (1974) noted that "some 'waiting period[s] . . . may not be penalties.'" (Quoting *Shapiro*.) A reasonable basis analysis should be applied which is the appropriate constitutional review for statutes involving the administration of public welfare assistance. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

While the right to travel may be important, its source is not explicitly stated in any provision of the United States Constitution, as acknowledged in *Shapiro*. 394 U.S. 618, 630. As a general matter, a state is under no duty to underwrite the costs of the exercise of Constitutional rights. *Harris v. McRae*, 448 U.S. 297, 317-318 (1980). Here,



California has not prohibited travel; it has simply limited welfare benefit levels for recent California residents to no more than they received or would have received in their State of prior residence. AFDC benefits remain available for recent California residents.

Furthermore, unlike the state law at issue in *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986), the Statute does not establish a permanent classification of benefit recipients who receive a lower amount of benefits. The statute at issue in *Soto-Lopez* impermissibly offered state civil service employment preference to veterans who were residents of New York when they entered military service, thus creating a permanent class of favored veterans. This Court reviewed the New York statute using a strict scrutiny analysis. The California Statute has much less impact on travel than the New York statute, because after one year of residency, a new California resident is indistinguishable from California residents of longer duration for purposes of AFDC benefits.

Thus, the Statute should not be subjected to strict scrutiny. *Shapiro* does not mandate strict scrutiny because the Statute's impact on travel is incidental to its primary purpose of reducing state AFDC expenditures by a temporary reduction in benefit levels. Statutes, such as the one at issue here, with a primary focus on reducing the cost of public welfare assistance, with only an incidental impact on travel, should be analyzed under the same reasonable basis standard to which public welfare assistance statutes are normally subjected. *Dandridge v. Williams*, 397 U.S. 471, 485.

## II

### **CALIFORNIA'S INTEREST IN REDUCING WELFARE COSTS IS SUFFICIENT TO JUSTIFY THE USE OF A TWO-TIER SYSTEM OF DISTRIBUTING AFDC BENEFITS**

Contrary to statements made by the District Court, and adopted by the Ninth Circuit, California's interest in reducing welfare costs is sufficient to justify the use of a two-tier system of distributing AFDC benefits.

The District Court's conclusion is derived from its belief that this Court's decisions mean that *any* differential treatment of welfare recipients based on length of state residency necessarily penalizes travel and, as such, cannot be justified by state budgetary concerns. However, as shown above, the Statute does not penalize the right to travel to the extent required to trigger a strict scrutiny analysis. Here, the correct analysis is the reasonable basis or rationality test. The Statute passes that test. It is constitutional because the continuing and worsening budget problems in California provide a rational basis for a statute that lowers state welfare expenditures.

When a state distributes benefits unequally, the distinctions it makes are subject to review under the Equal Protection Clause of the Fourteenth Amendment. The statutory scheme must pass the rationality test at a minimum. *Zobel v. Williams*, 457 U.S. 55, 60 (1982). Generally, a law will survive that scrutiny if the distinction rationally furthers a legitimate state purpose.

Durational residency requirements have been found constitutionally permissible if the justifications are sufficient. *Sosna v. Iowa*, 419 U.S. 393 (1975). In *Sosna*, the



state's longstanding and virtually exclusive interest in regulating domestic relations justified the impact on travel of a statute that required that a petitioner in a divorce action be a resident of Iowa for one year preceding the filing of the petition. 419 U.S. at 406, California's interest in maintaining a balanced budget is at least as important as a state's regulating domestic relations.

The plaintiff in *Sosna* was not irretrievably foreclosed from obtaining some part of what she sought. In the present case, plaintiffs' eligibility for public assistance is not in question. A potential AFDC recipient coming to California still may apply for, and, if eligible, obtain assistance, but at a rate equal to what that potential recipient would have received in the state of prior residence. Here, as in *Sosna*, the justifications for the durational residency requirement are rational, and hence, legitimate. A grant level which is constitutionally permissible in one state should not become unconstitutional in another state just because the grantee made a unilateral decision to change residence.

Here, the budget problems confronting California outweigh plaintiffs' claims. The Statute is a legislative solution designed to confront problems not apparent in *Shapiro* and its progeny. The Statute uses a temporary classification which does not permanently deprive plaintiffs of any interest. Because the effect of the Statute is neutral, the Statute is constitutionally permissible since it rests upon a rational basis. To the extent that *Shapiro* and its progeny appear to hold that financial considerations can never justify durational residency requirements, that holding should be re-examined.

The Statute easily passes the rational basis test. The unstated but plain purpose of the Statute is to reduce California's welfare expenditures. California was forced to reduce expenditures in the AFDC program in fiscal year 1990-91, in fiscal year 1991-92, and in fiscal year 1992-93 because of severe gaps between projected revenues and expenditures. Welfare and Institutions Code sections 11450.01, 11450.02 and 11450.03 (the Statute) were all designed to temporarily reduce aid grants in the AFDC program. Legislative Counsel's Digest of Senate Bill 485, added by Stats. 1992, chapter 722, No. 10 West's Cal. Legis. Service, p. 2898;<sup>6</sup> A29. Reducing state expenditures, especially in the midst of a continuing and growing budget deficit, is certainly a legitimate state purpose.

The Statute achieves its purpose of reducing state expenditures by temporarily limiting the level of AFDC grants to those who choose to move to California. As noted above, the Statute does not prevent people from moving to California; it simply renders neutral, for a period of one year, one of the factors a person might consider when contemplating a move to California.

Scholars have long observed that the fact and perception of welfare-induced interstate migration have had significant effects on state AFDC policies. Peterson, et al.,

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<sup>6</sup> The need to reduce state expenditures required in fiscal year 1992-93 is demonstrated by the fact that the Governor reduced the appropriation for the support of his office by 15 percent. His message stated, "I take this action because of the unprecedented fiscal constraints and limited resources in the General Fund." Budget Act of 1992, Statutes 1992, chapter 587, No. 9 West's Cal. Legis. Service, p. 1832, A31.

Welfare Magnets (The Brookings Institution, 1990) p. 83. Two important studies have shown that the effect of welfare benefits on migration is strong and significant. *Id.*, at 58. Furthermore,

" . . . as people make major decisions about whether they should move or remain where they are, they take into account the level of welfare a state provides and the extent to which that level is increasing. The poor do this roughly to the same extent that they respond to differences in wage opportunities in other states." *Id.*, at 83.

"A state with high welfare benefits provides incentives both for the poor to remain in the state and for the poor in other states to move there." *Id.*, at 20.

Whether or not the Statute constitutes wise policy is a decision which rests exclusively with the California Legislature. The degree to which the Statute relieves the state's fiscal crisis is also of no constitutional significance. As noted above, the setting of AFDC benefit levels is a political decision by the Legislature. " . . . [T]he Constitution does not empower this Court to second guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge v. Williams*, 397 U.S. 471, 487 (1970).

Recognizing the political process involved in the state's determination of the level of benefits, the Third Circuit, in *Everett v. Schramm*, 772 F.2d 1114 (3rd Cir. 1985), discussed the policy of political accountability in

the failure of Delaware's standard of need to reflect inflation.

"Under the statutory scheme, AFDC recipients and activists must avail themselves of the political process, not the judicial process . . . to effect the changes they seek." *Id.* at p. 1122.

Like Delaware's decision to reduce benefit levels, California's reduction of AFDC benefits is a political decision subject to public scrutiny. Here the legitimate state purpose is to reduce expenditures so that scarce resources may be preserved for all, including public assistance.

### III

#### IF SHAPIRO AND ITS PROGENY COMPEL INVALIDATION OF THE CALIFORNIA STATUTE, THEN THOSE PRINCIPLES SHOULD BE RECONSIDERED IN LIGHT OF THE FISCAL CRISES FACED BY STATES AND THE NEED FOR NON-DRASTIC OPTIONS TO ADDRESS THEM

The District Court concluded that the principles established by *Shapiro* and its progeny compelled invalidation of the Statute, stating if the purpose of the Statute was to " . . . conserve limited state funds in the hope that the state may do more for those who now and in the past have depended on the state, such a purpose, if laudable, is yet unconstitutional." (District Court Order, A16.) This Court should accept review of the Ninth Circuit's decision so that, if necessary, the principles of *Shapiro* can be reconsidered and modified in light of the fiscal crises faced by states and the need for non-drastic options to address them.



This Court does not lightly reconsider a precedent, and *stare decises* is the preferred course in constitutional adjudication. *United States v. Dixon*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 2849, 2864 (1993). However, *stare decises* is "not an 'inexorable command,'" *Planned Parenthood v. Casey*, \_\_\_ U.S. \_\_\_, 112 S. Ct. 2791, 2808 (1992), and "it has less power in constitutional cases, where, save for constitutional amendments, this Court is the only body able to make needed changes." *Webster v. Reproductive Health Serv.*, 492 U.S. 490, 518 (1989). As this Court said in *Dixon*:

"[W]hen governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent.' "

113 S. Ct. at 2864 (quoting *Payne v. Tennessee*, 501 U.S. \_\_\_, 111 S. Ct. 2597, 2600 (1991)).

The result of the District Court and the Ninth Circuit opinions following *Shapiro* and its progeny is that California is precluded from creating two-tier public assistance programs even where the Legislature has carefully avoided a scheme that would operate as a penalty on migration. In light of the budget crises that California and other states have been facing, the principles of *Shapiro* are unworkable and should be reconsidered.

Thus, this Court should re-examine whether a classification which imposes *any* penalty upon indigent persons who have exercised their constitutional right of interstate migration must be justified by a compelling state interest and that conservation of the taxpayers' purse is not a sufficient state interest to sustain a durational residency requirement relating to public assistance expenditures.

The principle that *any* penalty upon people who have exercised their right to travel must be justified by a compelling state interest should be replaced by an "undue burden" analysis which balances burdens on the right to travel against the interests supporting the governmental interest served by the challenged statute.

In his dissent in *Shapiro*, Justice Harlan raised the following question: " . . . whether a one-year welfare residence requirement amounts to an undue burden upon the right to interstate travel." *Shapiro* at 663 (Harlan, J. dissenting.) An undue burden analysis was used by Justices O'Connor, Kennedy and Souter in the opinion of this Court in *Planned Parenthood v. Casey*, \_\_\_ U.S. \_\_\_, 112 S. Ct. 2791, 2818-2220 (1992), a case involving a challenge, on due process grounds, to the constitutionality of amendment to the Pennsylvania abortion statute. Under this analysis, this Court stated that "[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right." *Casey* at 2821. Furthermore, this Court appears to have followed such an analysis in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 at 263 (1974) where this Court stated that "[t]he conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residence requirement. . . . "

Thus, in instances where state legislation is challenged by those claiming a constitutional deprivation, this Court should implement a balancing test between the governmental interests and the claimed constitutional deprivation. Only if the state legislation imposes an



undue burden, i.e., a substantial obstacle to the exercise of a constitutional right, should it be struck down.

Here, an undue burden on the right to travel would be a substantial obstacle to indigents seeking to migrate. As noted above, the California statute is carefully crafted to impose no burden on the right to travel. Thus, under an undue burden analysis, there is no substantial obstacle to indigents seeking to migrate, and California would have to show only a rational basis for a two-tier public assistance program.

The second principle of *Shapiro* and its progeny that must be re-examined is the principle that conservation of the taxpayers' purse is not a sufficient state interest to sustain a durational residency requirement relating to public assistance expenditures.

At the time California attempted to implement its Statute, California faced a budget deficit so severe that the state had no reserve available to cover the costs of unforeseen events. Failure to implement California's Statute was expected to result in additional, unbudgeted California State General Fund costs in the AFDC program of 8.4 million dollars in fiscal year 1992-93, and 22.5 million dollars in fiscal year 1993-94. (Hordyk Declaration, A22.)

Thus, this Court should grant the Petition for Writ of Certiorari in order to recognize the overwhelming fiscal crises confronting California and other states. States must be allowed to assert fiscal reasons to justify statutes implementing welfare reform. The principle that fiscal considerations alone are not sufficient to justify carefully crafted residency requirements may have been reasonable

during times of plenty but is no longer reasonable when California, as well as other states, is struggling to remain solvent. Fiscal concerns should be considered by courts when evaluating statutes. Justice Harlan, in his dissenting opinion in *Shapiro* at 673, mentioned several possible governmental interests which may be used to justify a durational residency requirement, including fiscally related reasons such as making funds more available for all. California has been forced to implement the Statute because diminishing financial resources have made it more difficult for California to provide for all of its residents, including recent ones.

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## CONCLUSION

California is mandated to provide services to all of its residents. These services include public education, the state judicial system, the state highway system, medical services for the indigent, the correctional system, mental health services, fire and police protection, and a licensing system that regulates many important privately provided goods and services. All of these governmental services are competing for limited financial resources. All discretionary programs run the risk of being cut by the California Legislature in the absence of adequate financial resources. The maintenance of a strong, fiscally sound state government must be deemed an interest important

enough that a change in AFDC benefit levels such as that mandated by the Statute can be upheld.

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July 25, 1994

FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DESHAWN GREEN, DEBBY )  
VENTURELLA, and DIANA P. )  
BERTOLTT, on behalf of themselves )  
and all others situated, )  
*Plaintiffs-Appellees,* )  
v. )  
ELOISE ANDERSON, individually )  
and in her official capacity as )  
Director, California Department )  
of Social Services; CALIFORNIA )  
DEPARTMENT OF SOCIAL SERVICES; )  
and THOMAS HAYES, Director, )  
California Department of )  
Finance, )  
*Defendants-Appellants.* )

No. 93-15306  
D.C.No.  
CV S-92-2118-  
DFL/JFM  
ORDERS

Appeal from the United States District Court  
for the Eastern District of California  
David F. Levi, District Judge, Presiding

Argued and Submitted  
April 13, 1994 - San Francisco, California

Filed April 29, 1994  
Amended June 13, 1994

Before: Alfred T. Goodwin, William A. Norris, and  
Diarmuid F. O'Scannlain, Circuit Judges.

**COUNSEL**

Theodore Garelis, Deputy Attorney General, Sacramento, California, for the defendants-appellants.

Mark D. Rosenbaum, ACLU Foundation of Southern California, Los Angeles, California, for the plaintiffs-appellees.

**ORDER**

We AFFIRM for the reasons stated in the district court's order. *Green v. Anderson*, 811 F. Supp. 516 (E.D. Ca. 1993). This panel will retain jurisdiction over the case.

**ORDER**

This Court's Order, filed April 29, 1994, is hereby corrected by inserting the words "the preliminary injunction" between "AFFIRM" and "for."

The April 29, 1994 Order is redesignated ORDER FOR PUBLICATION.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DESHAWN GREEN, DEBBY  
VENTURELLA, and DIANA P.  
DERTOLLT, on behalf of themselves Civ. S-92-2118  
and all others similarly situated,

Plaintiffs,

v.

ELOISE ANDERSON, CALIFORNIA  
DEPARTMENT OF SOCIAL  
SERVICES, THOMAS HAYES,

Defendants.

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MEMORANDUM  
OF DECISION  
AND ORDER

(Filed  
Jan. 28, 1993)

Plaintiffs are California residents who have moved or relocated to the State of California within the past twelve months and seek welfare benefits under the Aid to Families with Dependent Children ("AFDC") program.<sup>1</sup> California recently enacted a durational residency requirement of one year for full AFDC benefits; until the applicant for AFDC has resided in the State for twelve consecutive months, the applicant's level of benefits may not exceed what the family would have received in the

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<sup>1</sup> AFDC is a cooperative federalism program created by the Social Security Act of 1935. 42 U.S.C. §§ 601-609 (1982). AFDC benefits are financed jointly by the federal government and the states. The program is administered by the states under a plan approved by the Secretary of Health and Human Services. 42 U.S.C. § 601 (1982). Subject to certain limitations in federal law, the states have the power to set the standard of need and level of benefits. *King v. Smith*, 392 U.S. 309, 334 (1968); *Largo v. Sunn*, 835 F.2d 205, 208 (9th Cir. 1987).



state of prior residence. Cal. Welf. & Inst. Code § 11450.03 (West Supp. 1992).<sup>2</sup> The residency requirement became effective upon approval by the United States Secretary of Health and Human Services. The Secretary gave approval on October 29, 1992,<sup>3</sup> and the California Department of Social Services began applying the residency limitation shortly thereafter.

Plaintiff Deshawn Green was a Sacramento resident for twelve years and then moved to Louisiana in 1985. She had two children in Louisiana. In December 1992, Green decided to move back to California where her mother lives. The full monthly California AFDC grant for a family of three is \$624; under the two tier system for the next twelve months Green will receive \$190 a month

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<sup>2</sup> Section 11450.03 of the Welfare and Institutions Code provides:

Notwithstanding the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450, families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with paragraph (1) of subdivision (a) of Section 11450, not to exceed the maximum aid payment that would have been received by that family from the state of prior residence.

<sup>3</sup> The Secretary gave approval in the form of a waiver. See Pls.' Ex. 2. The waiver also approves a 1.3% reduction in benefits and permits the State to further reduce AFDC benefits to all recipients by up to 5%.

Because the validity of the Secretary's waiver is called into question by this lawsuit, the January 4, 1993, the court requested the United States to file an amicus brief in support of the Secretary's action. By letter dated January 21, 1993, the day before its brief was to be filed, the United States declined to file an amicus brief and made no request for additional time.

which is what she would have received in Louisiana. Plaintiff Debby Venturella came to California in December 1992. She has one child and is pregnant. She had been living in Oklahoma for six weeks when she decided to move to California where her parents live. She was not receiving AFDC benefits in Oklahoma. Under the two tier system, after her child is born, Venturella will be limited to AFDC benefits of \$341, which is the Oklahoma level for a family of three. Finally, plaintiff Diana Bertolli moved to California from Colorado to be with relatives. She has one child and will be limited to \$280 a month – the Colorado benefit – as opposed to the full California amount of \$504 for two family members.

All three plaintiffs allege that they moved to California to escape abusive family circumstances. Green Decl., ¶ 3; Venturella Decl., ¶ 12; Bertolli Decl., ¶ 2. There is no dispute that all three plaintiffs are bona fide residents of the State of California, and the State acknowledges that plaintiffs are entitled to AFDC benefits – albeit at the reduced level – as California residents. See Defs.' Opp'n, 19:14-15; Cal. Welf. & Inst. Code § 17100 (West 1991). By separate order the court will provisionally certify this matter as a class action.<sup>4</sup>

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<sup>4</sup> Plaintiffs have requested a provisional order certifying that this proceeding be maintained as a class action consisting of "all present and future AFDC applicants and recipients who have applied or will apply for AFDC on or after December 1, 1992, and who will be denied full California AFDC benefits because they have not resided in California for twelve consecutive months immediately preceding their application for aid." Defendants have filed a notice of non-opposition to the motion for provisional class certification.

The State of California budget allocates nearly \$6 billion for AFDC benefits in 1992-93. The California Department of Finance estimates that the durational residency requirement at issue here will save the State \$8.4 million in the 1992-93 fiscal year and \$22.5 million in the 1993-94 fiscal year. Hordyk Decl., ¶ 5.<sup>5</sup>

Plaintiffs now move for a preliminary injunction blocking application of the durational residency requirement in section 11450.03(a) of the California Welfare and Institutions Code. A temporary restraining order was issued December 22, 1992 by the Honorable Milton L. Schwarz and remains in effect by stipulation.

# I.

The State's two tier system for AFDC benefits implicates the constitutional right to freedom of travel or migration. The right to migrate from one state to another "occupies a position fundamental to the concept of our Federal union" and "has long been recognized as a basic right under the Constitution." *United States v. Guest*, 383 U.S. 745, 757-58 (1966). Although the right to travel is not protected by explicit provision in the Constitution, as it

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An April 1990 study by the State Department of Social Services found that 6.6% of the State's existing AFDC caseload resided in another state within the year before applying for benefits in California. Healy Decl., ¶ 5.

<sup>5</sup> Since California's fiscal year begins in July, the 1992-93 figures represent only a partial year's savings.

was in the Articles of Confederation,<sup>6</sup> the Supreme Court repeatedly has held that such a right inheres in the concept of a union. See, e.g., *id.*; *Zobel v. Williams*, 457 U.S. 55, 67 ("I find its unmistakable essence in that document that transformed a loose confederation of States into one Nation") (Brennan, J., concurring).<sup>7</sup>

The right of migration protects not only physical movement, and forbids direct restraints on interstate migration,<sup>8</sup> but also "protects residents of a State from being disadvantaged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents." *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 905 (1986). It is this equal treatment aspect of the right to migration – rather than direct barriers to movement – that has been most

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<sup>6</sup> Article IV of the Articles of Confederation provided that "the people of each State shall have free ingress and regress to and from any other State."

<sup>7</sup> Different provisions of the constitution have been relied upon as the textual source of the right to migrate, including the Privileges and Immunities Clause of Art. IV, see *Zobel v. Williams*, 457 U.S. 55, 71 (1982) (O'Connor, J., concurring), the Privileges and Immunities Clause of the Fourteenth Amendment, see *Edwards v. California*, 314 U.S. 160, 177-78 (1941) (Douglas, J., concurring), the Commerce Clause, see *Edwards*, 314 U.S. at 173-74, and the Equal Protection Clause of the Fourteenth Amendment, see *Hooper v. Bernalillo County Assessor*, 472 U.S. 617, 618 n.6 (1985).

<sup>8</sup> See *The Passenger Cases*, 48 U.S. (7 How.), 283 (1849) (invalidating tax on passengers from foreign ports); *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1867) (invalidating tax on persons leaving the state); *Edwards v. California*, 314 U.S. 160 (1941) (invalidating state law making it a crime to bring into the state a non-resident knowing that the non-resident is indigent).



important in the more recent cases. The Court consistently has rejected state preferences for longer term residents, even when motivated by an altruistic desire to do more for the state's "own:"

The State may not favor established residents over new residents based on the view that the State may take care of 'its own,' if such is defined by prior residence. Newcomers, by establishing bona fide residence in the State, become the State's 'own' and may not be discriminated against solely on the basis of their arrival in the State after [a fixed date].

*Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 623 (1985).

Because of this right to equal treatment without regard to the length of residency, the Court has almost invariably found that durational residency requirements are unconstitutional. Such residency requirements distinguish not between bona fide residents and non-residents but between residents based on the length of their residency in the state.

In *Shapiro v. Thompson*, 394 U.S. 618 (1969), the Court found unconstitutional provisions denying welfare assistance to residents who had not resided for at least one year within the jurisdiction. Such provisions discriminate invidiously by "creat[ing] two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction." *Id.*, at 627. The Court rejected the justification that such a waiting period would deter migration of poor people into the state; such a

justification was directly at odds with the constitutional right of migration. *Id.* at 629. Nor was it relevant whether those migrating to the state in fact were seeking higher assistance payments or came for other reasons; the Court found that a State had no more right to deter those from settling in search of greater welfare assistance than it would to deter those seeking better educational opportunities. *Id.* at 631-32. The Court also rejected any justification of the measure based on past tax contributions; this "reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection." Such an apportionment of state services would violate equal protection. *Id.* at 632. Finally, the Court held that the states' legitimate concern for its fiscal integrity could not justify discrimination against new residents for the "saving of welfare costs cannot justify an otherwise invidious classification." *Id.* at 633.

In *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974), the Court followed *Shapiro* and invalidated an Arizona provision requiring a year's residence in a county as a condition of receiving nonemergency medical care at county expense. The Court framed the issue as whether the state's classification "penalized" persons who had recently migrated to the state. *Id.* at 256-57. If there were such a penalty the provision would be unconstitutional unless supported by a compelling state interest. *Id.* at 262-63. The Court found that just as the denial of the necessities of life in *Shapiro* operated to penalize recent migrants so did the denial of nonemergency medical care. The Court rejected the State's argument that since some medical services – indeed, emergency services

- were provided without waiting, the denial of non-emergency medical services could be distinguished from the complete denial as a *Shapiro*. *Id.* at 259-61. Nor was the State's interest in protecting its financial stability of sufficient strength to justify the discrimination against newcomers:

The conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residence requirement which, in effect severely penalizes exercise of the right to freely migrate and settle in another State.

*Id.* at 263. Similarly, in *Dunn v. Blumstein*, 405 U.S. 330 (1972), decided before *Memorial Hospital*, the court invalidated a durational residency provision requiring one-year's residence before a new resident could vote.

On only one occasion has the Court upheld a durational residency requirement.<sup>9</sup> In *Sosna v. Iowa*, 419 U.S.

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<sup>9</sup> In two summary rulings the Court has upheld one year durational residency requirements for resident tuition at state universities. See *Starns v. Malkerson*, 401 U.S. 985 (1971), summarily aff'g 326 F. Supp. 234 (Minn. 1970) (three-judge court); *Sturgis v. Washington*, 414 U.S. 1057 (1973), summarily aff'g 368 F. Supp. 38 (W.D. Wash) (three-judge court). Because of their summary nature, these precedents are of diminished importance. *Zobel v. Williams*, 457 U.S. 55, 64 n.13 (1982). Moreover, the Court consistently has viewed tuition residency requirements less as durational than as determining the bona fide residence of transient students. See *id.*; *Vlandis v. Kline*, 412 U.S. 441, 452-53 and n.9 (1973). In *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 260 n.15 (1974), the Court suggests that a waiting period for free higher education is not a penalty on migration because such an interest is of less significance than welfare or medical care.

393 (1975), the Court upheld the State's one year residency requirement for petitioners seeking a divorce decree when the respondent is not a state resident. In distinguishing *Shapiro*, *Dunn*, and *Memorial Hospital*, the Court noted that the State's interest in regulating domestic relations and protecting its divorce decrees from collateral attack was materially greater than the budgetary and recordkeeping interests advanced in the prior cases.<sup>10</sup> Alternatively, the case may be understood to find the interest in a speedy divorce of insufficient magnitude to amount to a penalty on migration.

In three more recent cases, the Court has expanded the equality principle in *Shapiro* to invalidate state provisions that distinguish between residents on the basis of length of residency without incorporating a durational residency requirement. These cases more clearly have less to do with constraints on migration and travel than with the unconstitutionality of distinctions between residents based on how long they have lived in the state.

In *Zobel v. Williams*, 457 U.S. 55 (1982), the Court invalidated an Alaska statute providing payments from oil revenues to all residents where the size of the payment was determined by years of residency. The Court found that such a measure could not even survive the minimum rationality test. The Court warned that an

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<sup>10</sup> Referring to *Shapiro*, *Dunn*, and *Memorial Hospital*, the Court stated: "What those cases had in common was that the durational residency requirements they struck down were justified on the basis of budgetary or recordkeeping considerations which were held insufficient to outweigh the constitutional claims of the individuals." *Sosna*, 419 U.S. at 406.



approach that divided residents by years of residency threatened inequality over a large field:

If the states can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years of residence – or even limiting access to finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile? Could states impose different taxes based on length of residence? Alaska's reasoning could open the door to state apportionment of other rights, benefits, and services according to length of residency. It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible.

*Id.* at 64. Similarly, in *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), and *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986), the Court invalidated state veterans preferences limited to veterans who had been state residents prior to a certain date or who had entered the military when a state resident. In *Hooper* the State provided a tax exemption for Vietnam veterans residing in the State prior to May 8, 1976. In *Soto-Lopez* the state provided a veterans preference for civil service hiring limited to veterans who entered the military when a State resident. In both cases, using different approaches, the Court found that the equal protection clause will not countenance distinctions based on length or incipiency of

residency. *Hooper*, 472 U.S. at 623; *Soto-Lopez*, 476 U.S. at 911.<sup>11</sup>

## II.

In light of cases discussed above, the durational residency requirement in §11450.03 of the Welfare and Institutions Code must be invalid. Like *Shapiro*, the measure limits welfare and the basic necessities of life. As such it places a penalty on the decision of new residents to migrate to the State and be treated on an equal basis with existing residents. Although the measure does not eliminate all AFDC benefits, it produces substantial disparities in benefit levels and makes no accommodation for the different costs of living that exist in different states. In *Memorial Hospital* the measure was not saved because it

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<sup>11</sup> Defendants seek to distinguish *Zobel*, *Hooper* and *Soto-Lopez* because the statutes at issue in those cases created fixed, permanent distinctions between residents based on when they arrived in the state. *Soto-Lopez*, 476 U.S. at 909; *Hooper*, 472 U.S. at 617; *Zobel*, 457 U.S. at 59. Because the effect of §11450.03 is temporary, defendants argue it has a less significant impact on migration. However, the residency requirements invalidated in *Shapiro*, *Dunn* and *Memorial Hospital* were, by definition, temporary. Indeed, in *Soto-Lopez* the Court recognized, "[i]n previous cases, we have held that even temporary deprivations of very important benefits and rights can operate to penalize migration." *Id.* at 907. Moreover, the distinctions drawn in *Zobel* were no more fixed than here; in both situations as residents gain seniority they are granted greater benefits. In one sense the distinctions drawn in *Zobel* are more elaborate than here. Under §11450.03, after one year new residents are treated like everyone else. On the other hand, unlike the Alaska scheme, new California residents do not simply receive the same reduced payment but are further divided by state of prior residence.

pertained to some but not all medical services, so, too, this measure is not constitutional because it materially diminishes, without entirely eliminating, AFDC benefits.

Defendants suggest that the measure is not a penalty because the benefits provided are the same as those provided in the state of prior residence.<sup>12</sup> But under the cases the relevant comparison is not between recent residents of the State of California and residents of other states. Were this the comparison, the result in *Zobel* would be inexplicable since no other state provided a bounty to its citizens and thus Alaska treated new residents better in this respect than residents of other states. Similarly, it was of no significance in *Memorial Hospital* that the non-emergency care provided by Maricopa County may have been much superior to the medical care provided elsewhere. It is because the measure treats recent residents of California different than other *California* residents, and involves the basic necessities of life, that it places a penalty on migration. Moreover, the measure cannot fairly be said to provide the same payment as new residents could have received in the state of their prior residence since the cost of living, particularly housing, varies so substantially from state to state and generally is much higher in California than elsewhere.<sup>13</sup>

<sup>12</sup> Defendants also argue that §11450.03 has not actually deterred the migration of any of the named plaintiffs. However, lack of evidence in the record of actual deterrence is of no significance if the statute creates a classification which serves to penalize migration. *Memorial Hospital*, 415 U.S. at 257-58; *Dunn*, 405 U.S. at 340-41; *Shapiro*, 394 U.S. at 634.

<sup>13</sup> According to the table of Fair Market Rents established by the U.S. Department of Housing and Urban Development,

Because §11450.03 places a penalty on migration, the defendants must show that the statute furthers a compelling state purpose. The interests advanced do not rise to that level.

If the purpose of the measure is to deter migration by poor people into the State, and it appears that this may be the purpose,<sup>14</sup> then the measure must be unconstitutional. *Soto-Lopez*, 476 U.S. at 904; *Zobel*, 457 U.S. at 62

California's housing costs are higher than any other state except Massachusetts. See Greenstein Decl. at 10. According to plaintiffs, in all but one of the forty-six states (including the District of Columbia) where AFDC benefits are lower than in California, housing costs are also lower. Thus, under §11450.03, new California residents migrating from 45 of these 46 states will face higher costs of living with no increase in their benefits. *Id.*, ¶ 18.

<sup>14</sup> There is evidence in the record to support the conclusion that the purpose of §11450.03 was to deter migration of indigents. First, on March 9, 1992, the California State Assembly adopted Senate Bill ("SB") 366, a legislative proposal which contained language nearly identical to that contained in §11450.03 (the sole substantive difference was the use of "could" in SB 366 instead of "would"). Assemblymember Costa was the principal Assembly author of that measure. During the debate on the Assembly floor, Mr. Costa stated:

Realizing that in fact funds are short in California today, it makes a great deal of sense then to insure that incentives are provided for people from other parts of the country . . . that might be lured to California . . . for that purpose - to benefit from higher assistance. This legislation attempts to take care of that by requiring a one year residency requirement in California. . . .

Pls.' Ex. 11, 15: 17-26. The provisions of SB 366 were reflected in the Assembly's Budget Bill, Assembly Bill ("AB") 2303, and eventually enacted by the legislature in SB 485. McKeever Decl., ¶ 12. The legislative history of predecessor bills is relevant to discerning the legislative intent of a later enactment. See *Estate*



N.9; *Memorial* U.S. at 263-64; *Shapiro*, 394 U.S. at 629. But even if the purpose is only to conserve limited State funds in the hope that the State may do more for those who now and in the past have depended on the State, such a purpose, if laudable, is yet unconstitutional. For as the Court has stated more than once, the State may not identify a group of current residents as its "own" and seek to advance their interest and address their needs to the detriment of new residents. *Soto-Lopez*, 476 U.S. at 911; *Hooper*, 472 U.S. at 623; *Zobel*, 457 U.S. at 65; *Shapiro*, 394 U.S. at 632-33. The Supreme Court has never upheld a durational residency requirement whose sole justification was the State's desire to conserve its resources. If this

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of *Cowart v. Nicklos Drilling Co.*, \_\_\_ U.S. \_\_\_, 112 S. Ct. 2589, 2595 (1992).

Second, after §11450.03 was enacted, the State renewed its waiver request to the United States Department of Health and Human Services. In a letter dated September 17, 1992, the State described the durational residency requirement enacted by the legislature as follows: "This proposal reduces the incentive for families to migrate to California for the purpose of obtaining higher aid payments." Pls.' Ex. 12 at 3. And, in the brief opposing the temporary restraining order, defendants list among the bases for implementation of the statute: "to prevent California from being a magnet for people seeking to increase the level of their public assistance benefits by moving to California." Def. Opp'n to TRO, December 21, 1992, 3:16-19. The government's current interpretation of a statute is entitled to less deference when in conflict with its initial position. *Cf. Watt v. Alaska*, 451 U.S. 259, 273 (1981).

Finally, such a purpose is inherent in a two-tier benefit structure. Because §11450.03 does not save money by cutting all recipients' benefits equally, but instead affects only the benefits of new residents, its very structure suggests a goal of deterrence.

durational residency requirement were valid, then so would a measure limiting new residents to the same level of medical, educational, police, and fire services they received in the state of prior residence. If the one year requirement were valid because of cost savings, then so would a two year or longer requirement, or a graduated scale as in *Zobel*. Such a division among residents, all of whom are in fact bona fide residents of the State, violates equal protection.

Finally, even if the measure were viewed not as a penalty but as similar to the bounty in *Zobel*, it would still be impermissible under the analysis in *Zobel*. If the measure intends to deter settlement into the state of persons who need welfare and seek a higher benefit, it is sensibly designed but has an unconstitutional purpose. If the measure simply seek to save costs, defendants fail to explain why new residents are better able to bear a reduction in benefits than other residents. For the measure applies to those who were on welfare in the state of prior residence and those who were not, those who need welfare when they arrive in California and those who come to that need months thereafter. It applies without regard to the cost of living in the state of prior residence or whether the applicant had access to other resources in the state of prior residence. Stripped of the unconstitutional purpose of deterring migration, the measure lacks a rational design. This group of residents is no better able to bear the loss of benefits than a group randomly drawn. The State may seek to conserve resources by reducing welfare benefits to all recipients or to some recipients on some rational, non-discriminatory basis. But unless the purpose here is to deter mitigation, there is no other rational basis

for the distinction drawn among applicants all of whom are California residents.

The court recognizes that the measure at issue here passed easily into law. And California is not alone in seeking to limit the welfare benefits of new residents. New York has adopted a different schedule of benefits for new residents; Wisconsin and Minnesota<sup>15</sup> also have received federal approval to implement such measures. Genest Decl., ¶ 2,3. According to defendants, other states may be considered a similar kind of limitation. *Id.* Nonetheless, the Supreme Court of the United States, in what is now a large body of law, has made clear that the constitutionally based rights to migration and equal treatment do not permit significant distinctions between new and old residents based on the duration or incipiency of their residency. Therefore the State may not deny certain of its residents full welfare benefits simply because of the recency of their residency.

In short, under *Shapiro* and *Memorial Hospital*, the court finds that the two tier benefit schedule in §11450.03 penalizes new residents because of the recency of their migration to the State. The State's interest in reducing welfare costs is not sufficient to justify the disparate treatment of this class of needy residents.

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<sup>15</sup> In June of 1992, the Minnesota durational residency provision was declared unconstitutional by the Court of Appeals of Minnesota. *Mitchell v. Steffen*, 487 N.W.2d 896 (1992).

### III

Plaintiffs demonstrate that they face the possibility of irreparable injury if the injunction is not issued.<sup>16</sup> All of plaintiffs have been unable to locate housing in California that is affordable to them on the reduced AFDC payment. See Green Decl., ¶ 6,7; Venturella Decl., ¶ 21; Bertolli Decl., ¶ 23.

Plaintiffs' motion for preliminary injunction is granted. The Court orders:

(1) Pending judgment in this action, defendants and their agents, assignees and successors in interest are enjoined from implementing a) California Welfare and Institutions Code § 11450.03, b) regulations promulgated pursuant to § 11450.03, including but not limited to M.P.P. E.A.S. § 89-402.4, c) All-County Letter ("ACL") 92-98 and All-County Information Notice ("ACIN") I-54-92 to the extent that the ACL or ACIN deny standard California AFDC benefits to members of the plaintiff class or determine an AFDC benefit in whole or in part by reference to the AFDC grant in any other state or territory;

(2) Within ten calendar days of the issuance of this order, the defendants shall issue an All-County Letter notifying the counties and county welfare directors of this order, and instruct them to stop implementation of

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<sup>16</sup> To obtain a preliminary injunction, a party must show either (1) likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of serious questions going to the merits and the balance of hardships tipping in its favor. These are not separate tests, but the "outer reaches of a single continuum." *Los Angeles Memorial Coliseum v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980).



the policy enjoined by this order. Defendants shall provide plaintiffs' counsel with a copy of this All-County Letter.

(3) Plaintiffs will be permitted to proceed in this matter without posting bond or any other security.

IT IS SO ORDERED.

Dated: 28 January 1993.

/s/ David F. Levi  
 DAVID F. LEVI  
 United States District Judge

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# DECLARATION OF DENNIS HORDYK

I, Dennis Hordyk, declare:

1. I am the Assistant Director of the Department of Finance. The Department has overall responsibility for compilation of the Governor's Budget for the State of California.

2. The AFDC program is funded from the state general fund revenues and federal funds, on a 50/50 match basis; the State pays 95 percent of the non-federal share of the AFDC program costs. In the 1992-93 budget, the state's General Fund revenues total approximately \$40.9 billion.

3. For the fiscal year ending June 30, 1993, the Department of Finance is projecting a \$2.1 billion *deficit* in the state's general fund. The budget deficit is so severe that the *state will have no reserve* available to cover the costs of unforeseen events.

4. The current 1993-94 budget plan resolves the \$2.1 billion 1992-93 deficit during the 1993-94 fiscal year. The Department of Finance is projecting that revenues will actually decline by over \$1 billion from 1992-93. This will be the second year of revenue declines as revenues declined from 1991-92 to 1992-93 by approximately \$1.1 billion. This is a result of continuing poor performance in the economy. These revenue declines will require reductions to the 1993-94 fiscal year budget plan beyond those already taken in the 1992-93 budget and the current 1993-94 budget plan.

5. I understand the U.S. District Court has temporarily restrained implementation of Welfare and Institutions Code section 11450.03, as enacted by Chapter 722 of the Statutes of 1992. Failure to implement Section 11450.03 would result in additional, unbudgeted state General Fund costs in the AFDC program of \$8.4 million in fiscal year 1992-93, and \$22.5 million in fiscal year 1993-94.

6. There are no funds appropriated by the 1992-93 state budget to pay for this increase in expenditures in the AFDC program.

7. As indicated above, there are simply no available state general fund revenues to fund a supplemental or deficiency appropriation to meet this additional expense.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 14, 1993, at Sacramento, California.

/s/ Dennis Hordyk  
DENNIS HORDYK

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I, John D. Healy, declare as follows:

1. I am the Chief Deputy Director of the California State Department of Social Services. As Chief Deputy Director I am responsible for supervising the implementation of federal and state laws, formulating state regulations setting administrative policy relative to welfare benefit payments and a number of social services programs such as Aid to Families with Dependent Children (AFDC).
2. AFDC is California's largest welfare program. In fiscal year 1992-1993 it will provide public assistance to 2,458, 600 people per month. In fiscal year 1992-1993 AFDC grants in California will total \$5.9 billion dollars. Of that total amount, \$2.8 billion dollars in funds are derived from the California state general fund.
3. During the 1980's, California's AFDC caseload grew by an average annual percentage rate of 3.7 percent. This growth rate substantially accelerated in California since fiscal year 1988-1989. Approximately 636,500 families were receiving AFDC benefits in the fiscal year 1988-1989. This number grew to 706,500 cases in fiscal year 1990-1991, an increase of 70,000 families, or 11 percent of the entire AFDC caseload. The total AFDC caseload increased to 790,406 cases, an 11.9 percent increase in fiscal year 1991-1992. The Department projects a caseload increase of 7.6 percent for fiscal year 1992-1993, to 850,600 families.
4. California has the second highest grant level in the continental United States. California accounts for 27 percent of all money spent nationwide on the AFDC program, and 17 percent of the national AFDC caseload, though it has only 12 percent of the nation's population.



5. In a survey conducted by the Department's Statistics Services Bureau in April of 1990, it was found that 6.6 percent of the existing AFDC caseload resided in another State within one year of application of AFDC benefits in California.
6. For the 1992-1993 fiscal year the Department projected that implementation of Welfare and Institutions Code Section 11450.03 will reduce total AFDC expenditures by an amount of \$17.5 million dollars. Of this total reduction, California general fund expenditures will be reduced by \$8.4 million dollars.
7. For the 1993-1994 fiscal year the Department projects that implementation of Welfare and Institutions Code Section 11450.03 will reduce total AFDC expenditures by an amount of \$47.037 million dollars. Of this total reduction, California general fund expenditures will be reduced by \$22.485 million dollars.
8. The immense gap between statewide revenues and expenditures has forced the state and the Department to identify areas where expenditures can be reduced, and to make reductions in program allocations. Though Welfare and Institutions Code Section 11450.03 by itself will not solve the State's fiscal problem, it is a necessary and prudent fiscal measure to achieve a balanced budget.
9. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 13, 1993 at Sacramento, California.

/s/ John D. Healy  
John D. Healy

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I, Michael C. Genest, declare as follows:

1. I am the Deputy Director of the Welfare Programs Division of California Department of Social Services. The division administers the Aid to Families with Dependent Children (AFDC) program, and other programs. From 1981 through 1991, I was employed by the California Legislative Analyst's Office, where I specialized in health and welfare programs, including AFDC. In 1986, I assumed direction over the welfare and employment section of the Legislative Analyst's Office. I directed the research, analysis and writing of a publication entitled: "California's AFDC program".
2. California is not unique in implementing a scheme of benefit levels for new residents based upon a client's prior state of residence. The State of New York has a general assistance schedule of benefits paid to new residents based upon rates paid in the prior state of residence if the principal earner does not have a recent connection to the labor force. For the first six months, new residents receive 80% of the grant in the previous state of residence or 80% of the New York grant whichever is less.
3. California's Family Relocation Grant law is within the mainstream of welfare reform legislation in the United States. California, Wisconsin, and Minnesota have received federal permission to implement a residency based grant program and other states are moving towards a residency based grant program.
4. Working in conjunction with other provisions of law, one effect of Welfare and institutions Code Section 11450.03 will be to promote employment among new California residents. A gap exists between the higher California needs standard, which applies to all AFDC cases, and the lower maximum aid payments (MAP). However, since net countable income (e.g.,

wages, unemployment insurance benefits, social security income, etc.) is deducted from the needs standard only, families may keep a larger share of their other income before the MAP is affected. For example, a family of three in California has a need standard of \$703 and a MAP of 624, creating a gap of \$79 which the family can keep as additional income before it affects their aid payment. A family of 3 from Oregon has a California need standard of \$703 and an Oregon MAP of \$460, creating a gap of \$243. This family will get to keep this much more of their income than the California family before aid is affected. Thus, an incentive to close the gap with earned income is created.

Additionally, California has suspended application of the 100 hour rule pursuant to its federally approved Demonstration Project. Suspension of the 100 rule [sic] will create greater incentives to work through removal of a barrier to self-sufficiency. Prior to enactment of this provision recipients working 100 hours or more per month were ineligible for AFDC benefits.

5. Under current law, California will pay the California Special Needs Allowance (SNA) to all AFDC families who are entitled to it. Many states do not have a SNA for homeless assistance. In California, SNA provides an eligible recipient to up to \$30 per day for temporary shelter and up to 160% of MAP for permanent housing.
6. Under current law, all persons impacted by Welfare and Institutions Code Section 11450.03 are eligible for full Medical benefits. Under current law, all persons impacted by Welfare and Institutions Code Section 11450.03 are eligible for Food Stamps. In fact, for every three dollars an AFDC grant is reduced by operation of Welfare and Institutions Code Section

11450.03, Food Stamp benefits are increased by approximately one dollar.

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 13, 1993 at Sacramento, California.

/s/ Michael C. Genest  
Michael C. Genest

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Legislative Counsel's Digest of Senate Bill 485, Chapter 722, No. 10 West's Cal. Legis. Service, p. 2898

Existing law establishes the Primary Intervention Program, pursuant to which the State Department of Mental Health awards grants for the provisions of various school-based mental health services to children. funding for the grants is made from the Mental Health Primary Prevention Fund and from the General Fund and other sources.

Existing law establishes the School-Based Early Mental Health Intervention and Prevention Services for Children Matching Grant Program, pursuant to which the Director of Mental Health awards matching grants to local educational agencies to pay the state share of the costs of providing school-based early mental health intervention and prevention services to eligible children.

This bill would make various revisions in the programs, including funding criteria, and would provide that grants for the Primary Intervention Program shall be funded from funds appropriated for the School-Based Early Mental Health Intervention and Prevention Services for Children Matching Grant Program.

Existing law provides for the placement of a person with developmental disabilities found incompetent to stand trial in a state developmental center or other appropriate facility or outpatient program and for the referral and treatment of persons who are incompetent to stand trial due to a mental disorder.

This bill would revise those procedures.

By requiring a higher level of service of counties implementing these provisions, this bill would impose a state-mandated local program.

Existing law establishes the Patients' Rights Office within the State Department of Mental Health to provide various services on behalf of mental health patients in the state.

This bill would delete the office and instead require the department to contract with the protection and advocacy agency to provide specified patients' rights advocacy services beginning January 1, 1993, and would provide that those services may be provided directly or indirectly through subcontracts.

Existing law provides for the Aid to Families with Dependent Children (AFDC) program, pursuant to which assistance, including cash grants and noncash benefits, is provided to eligible low-income individuals. Existing law also makes AFDC recipients automatically eligible for benefits under the Medi-Cal program. The AFDC program is administered by county welfare departments under the supervision of the State Department of Social Services, and is funded in part by the federal government.

This bill would temporarily reduce aid grants by specified amounts.

Under the existing Aid to Families with Dependent Children-Foster Care program, eligible providers are reimbursed for the provision of services to eligible AFDC beneficiaries.

This bill would revise the schedule of reimbursement under the AFDC-FC program, and would revise group home reimbursement eligibility standards.

Under the State Supplementary Program (SSP) for the aged, blind, and disabled, payments are made to eligible individuals and married couples in specified amounts.

This bill would with exceptions, reduce the SSP payment schedules for a specified period.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, or by or through contract by the county, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program.

The bill would revise the schedule of benefits under the IHSS program, and would revise the method of providing services under the IHSS program.

To the extent this bill would increase the responsibility of the counties to implement the IHSS program, this bill would impose a state-mandated local program.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons.

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California Budget Act of 1992, Statutes 1992, Chapter 587, No. 9 West's Cal. Legis. Service, p. 1832

Item 0450-101-001 – For local assistance, State Block Grants for Trial Court Funding. I reduce this item from \$689,336,000 to \$483,636,000 by reducing:

(a) 10-Block Grants for Trial Courts from \$635,901,000 to \$430,201,000, and delete Provision 3.

I am reducing the \$205,700,000 augmentation for Trial Court Funding Block Grants because I plan to veto AB 1344, which provided for related revenue increases to pay for this augmentation. The proposed revenues were not sufficient to offset the increased block grants in future fiscal years.

I am deleting Provision 3, which would have provided for reductions in the appropriation for any shortfall in civil filing fee revenues related to the trailer bill legislation.

Item 0500-001-001 – For support of Governor's Office. I reduce this item from \$8,335,000 to \$7,377,250 by adding:

Unallocated Reduction – \$957,750

I am reducing \$957,750 from this item to reflect a 15 percent cut in the appropriation for support of my office. I take this action because of the unprecedented fiscal constraints and limited resources in the General Fund.

Item 0530-001-001 – For support of Secretary for health and Welfare Agency. I delete Provision 1.

I am deleting Provision 1 which relates to HIV-related General Fund expenditures. While I have made



great efforts to protect public health programs from severe reductions in the 1992-93 budget, this language is inappropriately restrictive in requiring the Health and Welfare Agency to implement a maintenance of effort requirement, which would preclude in reductions to other public health programs.

As a more appropriate manner of addressing any potential maintenance of effort issues, I am retaining provision (f) which was added to Control Section 27.00 of this act. This provision would allow the Department of Finance to augment funds for HIV-related programs to ensure compliance with the requirements for Ryan White CARE Act Title II funding.

Item 0540-001-001 – For support of Secretary for Resources. I delete Provision 3.

I am deleting Provision 3, which requires the Director of Finance, prior to authorizing any expenditures from this item, to reduce the amount appropriated in this item by the same percentage as the General Fund reduction made to the budget of the California Conservation Corps contained in Item 3340-001-001. This language is an infringement on the Executive Branch's budget development process and restricts my authority to administer a budget that reflects my spending priorities.

Item 0750-001-001 – For support of Office of the Lieutenant Governor. I reduce this item from \$1,260,500 to \$1,222,500 by reducing:

(a) 10 – General Activities from \$1,330,500 to \$1,292,500.

I am reducing this item by \$38,000 in recognition of the unprecedented fiscal constraints and limited resources in the General Fund. I take this action as a matter of equity because the budgets for nearly all state departments funded from the General Fund have been reduced through previous legislative action.

Item 0820-001-001 – For support of Department of Justice. I delete Provision 4.

I am deleting Provision 4 which would prohibit the department from creating a new program or shifting funds in an amount exceeding \$100,000 in specified program areas unless the Director of Finance receives approval from the Chair of the Joint Legislative Budget Committee, 30 days prior to such action. This language is unnecessarily restrictive and interferes with the department's and the Administration's ability to effectively manage these programs.

Item 0840-001-001 – For support of State Controller. I reduce this item from \$61,763,000 to \$60,763,000 by increasing:

(cx) Unallocated reduction from \$ – 4,064,000 to \$ – 5,064,000.

In recognition of the State's unprecedented fiscal constraints and in order to make the unallocated reduction taken by the State Controller's Office more closely approximate the reductions that nearly all other General Fund departments will absorb, I am increasing the Unallocated Reduction by \$1,000,000.

Item 0860-001-001 – For support of State Board of Equalization. I delete Provision 4.

I am deleting Provision 4, which would require the expenditure of resources to initiate a strategic plan to consolidate the state's tax administration activities if subsequent legislation is enacted providing the authorization.

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No. 94-197

Supreme Court, U.S.  
**FILED**  
**AUG 26 1994**  
OFFICE OF THE CLERK

In The  
**Supreme Court of the United States**

October Term, 1994

ELOISE ANDERSON, individually and in her official  
capacity as Director, California Department  
of Social Services; CALIFORNIA DEPARTMENT OF  
SOCIAL SERVICES; THOMAS HAYES, Director, California  
Department of Finance,

*Petitioners,*

v.

DESHAWN GREEN, DEBBY VENTURELLA, and DIANA P.  
BERTOLLI, on behalf of themselves and all  
others similarly situated,

*Respondents.*

Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit

BRIEF IN OPPOSITION

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30 pp

**QUESTION PRESENTED**

Whether the Court should overrule its longstanding and unbroken line of precedents holding that the Constitution prevents a State from discriminating against bona fide residents in the distribution of welfare assistance based solely upon their status as recent migrants from another State.



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No. 94-197

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In The  
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October Term, 1994

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ELOISE ANDERSON, individually and in her official  
capacity as Director, California Department  
of Social Services; CALIFORNIA DEPARTMENT OF  
SOCIAL SERVICES; THOMAS HAYES, Director, California  
Department of Finance,

v. *Petitioners,*

DESHAWN GREEN, DEBBY VENTURELLA, and DIANA P.  
BERTOLLT, on behalf of themselves and all  
others similarly situated,

*Respondents.*

---

**Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

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**BRIEF IN OPPOSITION**

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Respondents Deshawn Green, Debby Venturella, and  
Diana P. Bertollt, on behalf of themselves and all others  
similarly situated, respectfully ask the Court to deny the  
petition for writ of certiorari, for the reasons stated  
below.

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### STATEMENT OF THE CASE

The statute at issue in this case imposes a one year durational residency requirement on the receipt of Aid to Families With Dependent Children ("AFDC") in California. Cal. Welf. & Inst. Code § 11450.03 (West 1994). For the first year of residency, the California statute limits the public assistance of an otherwise eligible newcomer and bona fide California resident family by as much as eighty percent of the amount granted to longer-term residents, based on the assistance levels provided in the needy family's previous state.

For example, a family of four moving to California from Mississippi would receive only \$144 per month in AFDC assistance, instead of the standard California grant of \$743. Pls.' Ex. 3 at 16, 25-26; CR 69.<sup>1</sup> The statute thereby creates two classes composed of equally needy state residents, distinguishable only by their length of most recent residence within California. Members of one class – solely because of shorter residency – have their benefits reduced. Further, within the disadvantaged class of new residents, the statute establishes forty-six separate tiers of grant levels based only on the state of prior residence.

The three named Plaintiffs all moved to California shortly before this lawsuit was commenced for reasons unrelated to the receipt of welfare benefits. Pet. App. at A4-5; *Green v. Anderson*, 811 F. Supp. 516, 517 (E.D. Cal. 1993), *aff'd*, 26 F.3d 95 (9th Cir. 1994). Plaintiff Deshawn Green had previously lived in California. *Id.* All three of

<sup>1</sup> Citations are to both the exhibit number before the District Court ("Pls.' Ex.") as well as the clerk's record number at the Ninth Circuit ("CR").

the named Plaintiffs were escaping abusive domestic circumstances and moved to California to be with relatives. *Id.*

As the Plaintiffs had not lived in California for twelve consecutive months prior to their applications, they were subject to reduced assistance levels by operation of the residency requirement. When Respondents filed this case, the standard monthly assistance level for a family of three receiving AFDC in California was \$624, and for a family of two, \$504. Ms. Green and Plaintiff Debby Venturella, who had not received AFDC in her state of prior residence, were to receive grants of \$190 and \$341 a month respectively for their families of three as a consequence of the requirement; Plaintiff Diana Bertolt's assistance level for her family of two was to be \$280 per month. Pet. App. at A4-5; *Green*, 811 F. Supp. at 517.

The District Court found that the residency requirement "produce[d] substantial disparities in benefit levels," and "materially diminishe[d]" AFDC benefits. Pet. App. at A13, 14; *Green*, 811 F. Supp. at 521. Petitioners submitted no evidence to the District Court to controvert expert testimony that, given the high cost of living in California coupled with the lower grant levels in most other states, newcomer residents subject to the residency requirement would incur severe difficulties securing housing, forcing them "into overcrowded or substandard quarters or even to become homeless, all of which can pose significant health and safety risks to residents, especially children." Pls.' Ex. 19 at 8, lines 12-14; CR 69; *see also* Pet. App. at A14-15 n.13; *Green*, 811 F. Supp. at 521 n.13.



The District Court also held that "unless the purpose here is to deter migration, there is no other rational basis for the distinction drawn among applicants all of whom are California residents." Pet. App. at A17-18; *Green*, 811 F. Supp. at 523. The legislative history of the measure demonstrated that the purpose behind enactment of the durational residency statute was, in fact, to discourage indigent families from moving to California. For example, during the debate on the California Assembly floor, the principal Assembly author of the measure's predecessor bill stated:

Realizing that in fact funds are short in California today, it makes a great deal of sense then to insure that incentives are provided for people from other parts of the country . . . that might be lured to California . . . for that purpose - to benefit from higher assistance. This legislation attempts to take care of that by requiring a one year residency requirement in California. . . .

Pet. App. at A15 n.14; *Green*, 811 F. Supp. at 522 n.14.

The State in its waiver request to the federal government seeking approval for imposition of the requirement, described the durational residency requirement as follows: "This proposal reduces the incentive for families to migrate to California for the purpose of obtaining higher aid payments." Pet. App. at A16 n.14; *Green*, 811 F. Supp. at 522 n.14.<sup>2</sup> Petitioners in their brief opposing the temporary restraining order in this case listed "among the bases

<sup>2</sup> On the day this action was filed, Petitioner Anderson issued a press release describing the aim of the challenged statute as "discouraging people from coming to California just for higher welfare benefits." Pls.' Ex. 26; CR 35.

for implementation of the statute: 'to prevent California from being a magnet for people seeking to increase the level of their public assistance benefits by moving to California.'" *Id.* Finally, as the courts below noted, "such a purpose is inherent in a two-tier benefit structure. Because § 11450.03 does not save money by cutting all recipients' benefits equally, but instead affects only the benefits of new residents, its very structure suggests a goal of deterrence." *Id.*

The District Court, applying *Shapiro v. Thompson*, 394 U.S. 618 (1969), and other cases decided by this Court, found that Plaintiffs faced irreparable injury and were likely to succeed on the merits of their claim that the statute penalized newly-arrived residents for exercising their right to migrate interstate, and issued a preliminary injunction. Pet. App. at A3-20; *Green v. Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993). The court held that "the State may not deny certain of its residents full welfare benefits simply because of the recency of their residency." Pet. App. at A18; *Green*, 811 F. Supp. at 523.

The Court of Appeals for the Ninth Circuit summarily affirmed the preliminary injunction for the reasons stated in the District Court's order, and retained jurisdiction over the case. Pet. App. at A1-2; *Green*, 26 F.3d 95. Petitioners did not seek rehearing or rehearing *en banc* from the Court of Appeals.

This petition represents the second time in the past eight months that Petitioners have requested review by this Court of the same issue. The State of California previously filed an amicus brief in support of a petition for writ of certiorari submitted by the State of Minnesota

in *Steffen v. Mitchell*, No. 93-720. The Court denied review on January 18, 1994. \_\_\_ U.S. \_\_\_, 114 S. Ct. 902.<sup>3</sup>

The residency requirement enjoined by the courts below became effective only upon the approval, in the form of a waiver of certain federal requirements, of the United States Secretary of Health and Human Services. Cal. Welf. & Inst. Code § 11450.03(b) (West 1994); Pet. App. at A4; *Green*, 811 F. Supp. at 517. On July 13, 1994, the Ninth Circuit Court of Appeals vacated this waiver, and remanded the matter to the District Court with instructions to remand to the Secretary for compliance with the statutory mandate controlling grants of waivers. *Beno v. Shalala*, \_\_\_ F.3d \_\_\_, No. 93-16411, 1994 U.S. App. LEXIS 17043 (9th Cir. July 13, 1994). Although California has petitioned for rehearing, the Secretary, whose waiver is at issue in the *Beno* case, has announced that she will not seek review of that ruling.<sup>4</sup>

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### SUMMARY OF ARGUMENT

This case does not present any issues which merit review by this Court. The State has neither alleged nor shown either a conflict between federal or state courts or a departure from this Court's precedents. The State's assertion that the case presents an important question of

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<sup>3</sup> The Court also denied review in a California residency case in 1992. *Del Monte v. Wilson*, 824 P.2d 632 (Cal.), cert. denied sub nom. *Wilson v. Del Monte*, No. 91-1885, \_\_\_ U.S. \_\_\_, 113 S. Ct. 490 (1992).

<sup>4</sup> A copy of the letter from counsel for the federal appellees to the Clerk for the Ninth Circuit is attached as Exhibit 1 to this brief.

federal law which has not yet been addressed by this Court is erroneous. A well-settled line of Supreme Court cases on residency discrimination has repeatedly addressed and rejected all of the arguments made by Petitioners in this case. Under those precedents, the United States Court of Appeals for the Ninth Circuit correctly affirmed the preliminary injunction of the District Court.

In light of the strong precedent supporting the lower court decisions, Petitioners resort to asking this Court to overrule a quarter-century of case law. Yet barely seven months ago this Court rejected the identical request in the context of a durational residency requirement which worked a less onerous penalty than the California statute here. *Steffen v. Mitchell*, 504 N.W. 2d 198 (Minn. 1993), cert. denied, No. 93-720, \_\_\_ U.S. \_\_\_, 114 S. Ct. 902 (1994). Petitioners here, as in *Steffen*, have failed to identify any compelling reason why this Court should ignore *stare decisis* and take the extraordinary step of overruling its long-standing and unbroken line of precedents.

Moreover, as the courts below concluded, even under the rational basis review which Petitioners urge this Court to apply, the California residency requirement still fails because Petitioners have never proffered any constitutionally-sound rational basis for discriminating against only newcomers in the distribution of welfare benefits. The courts below determined upon an extensive factual record that the only reason explaining enactment of the statute was a constitutionally impermissible intent to discourage newcomers from migrating to California.



In any event, a decision overruling the residency discrimination cases and reversing the decision of the Court of Appeals would not change the result in this case. As Petitioners concede, "[o]n July 13, 1994, the Ninth Circuit vacated the federal waivers necessary to implement the provisions of this section." Pet. at 5 n.4. Thus, this case has become both moot and not ripe for review. The decision sought by the State from this Court would be merely advisory.

#### REASONS FOR DENYING THE PETITION

##### I. THIS COURT HAS ALREADY ADDRESSED THE QUESTION PRESENTED IN THIS CASE.

The State's assertion that its durational residency statute presents a new question not previously determined by this Court is erroneous. As the courts below noted, numerous prior decisions of this Court have held or reaffirmed that statutes which reduce welfare benefits necessary to meet basic needs only for new residents are unconstitutional.

The right to interstate migration, of course, has been long recognized as essential to our federalism. As the court below observed: "the Supreme Court repeatedly has held that such a right inheres in the concept of a union." Pet. App. at A7; *Green*, 811 F. Supp. at 518. Accordingly, "[t]he Court consistently has rejected state preferences for longer term residents" (Pet. App. at A8; *Green*, 811 F. Supp. at 528), and "has almost invariably found that durational residency requirements are unconstitutional". Pet. App. at A8; *Green*, 811 F. Supp. at 519.

Specifically, this Court has often declared that states may not try to fence out indigents or to ration benefits based upon length of residency in a state. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 899-912 (plurality), 912-916 (concurring opinions) (1986); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985); *Zobel v. Williams*, 457 U.S. 55 (1982); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Edwards v. California*, 314 U.S. 160 (1941). As the courts below concluded, "the Supreme Court of the United States, in what is now a large body of law, has made clear that the constitutionally based rights to migration and equal treatment do not permit significant distinctions between new and old residents based on the duration or incipiency of their residency." Pet. App. at A18; *Green*, 811 F. Supp. at 523.<sup>5</sup>

As the courts below found, the durational residency statute here deprives newly-arrived residents of the ability to obtain basic necessities of life, including shelter, medical care, and clothing, solely because the new residents have recently exercised their right to interstate migration. Pet. App. at A13-14, and n.13; *Green*, 811 F. Supp. at 521, and n.13. This Court, in *Shapiro v. Thompson*, 394 U.S. 618, held that states may not constitutionally restrict welfare benefits for new residents by imposing

<sup>5</sup> See also *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (holding that "[t]his federalist structure of joint sovereigns preserves to the people numerous advantages" including "making government more responsive by putting the states in competition for a mobile citizenry.") The durational residency requirement here shatters that structure: States would compete to keep the poor among the citizenry outside their boundaries.

durational residency requirements. See also *Memorial Hospital v. Maricopa County*, 415 U.S. 250. The California statute is unconstitutional under the express holding of *Shapiro* and its progeny. And, as the district court concluded, "[i]f this durational residency requirement were valid, then so would a measure limiting new residents to the same level of medical, educational, police, and fire services they received in the state of prior residence." Pet. App. at A16-17; *Green*, 811 F. Supp. at 522.

The State argues that the California statute is somehow different, asserting that the purpose of the statute is merely to remove the level of welfare benefits as "one of the factors a person might consider when contemplating a move to California." Pet. at 15. This assertion is surely without any factual support as to the Plaintiffs in this case, since they fled to California to escape abusive domestic circumstances. Pet. App. at A5; *Green*, 811 F. Supp. at 517. But, in any event, this Court has already addressed this precise issue: "[A] State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally." *Shapiro*, 394 U.S. at 631. In *Memorial Hospital*, the Court restated this position, explaining that "[a]n indigent who considers the quality of public hospital facilities in entering the State is no less deserving than one who moves into the State in order to take advantage of its better educational facilities." *Memorial Hospital*, 415 U.S. at 264. More recently in *Zobel*, the Court noted that an attempt to inhibit migration into a state would encounter "insurmountable constitutional difficulties." 457 U.S. at 62 n.9; accord *Hooper*, 472 U.S. at 620 n.9.

In essence, Petitioners argue that the right to interstate migration and its attendant heightened scrutiny are not implicated here because new residents are in no worse position than they were in their state of prior residence. The State's legal analysis is fundamentally flawed. As the Courts below observed, "the relevant comparison is not between recent residents of the State of California and residents of other states. . . . It is because the measure treats recent residents of California different than other *California* residents, and involves the basic necessities of life, that it places a penalty on migration." Pet. App. at A14; *Green*, 811 F. Supp. at 521 (emphasis in original).

This Court has repeatedly reaffirmed this central holding of *Shapiro*. For example, in *Memorial Hospital*, the Court held: "[T]he right of interstate travel must be seen as insuring new residents the *same* right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents." 415 U.S. at 261 (emphasis added). Indeed, the Court has so often repeated this holding as to leave no doubt as to its meaning and continued validity. See *Soto-Lopez*, 476 U.S. at 904; *Zobel*, 457 U.S. at 60 n.6; accord *Hooper*, 472 U.S. at 618 n.6. Likewise, this Court's decision in *Zobel* would otherwise be unsupportable as no other state than Alaska offered a bounty to its citizens. Here, the State has conceded that the newcomer residents disadvantaged by the residency requirement are all bona fide residents of California. Pet. App. at A5; *Green*, 811 F. Supp. at 517-518.

Moreover, the State's argument is factually inaccurate on this record. As the courts below found, "the measure cannot fairly be said to provide the same payment as new



residents could have received in the state of their prior residence since the cost of living, particularly housing, varies so substantially from state to state and generally is much higher in California than elsewhere." Pet. App. at A14 n.13; *Green*, 811 F. Supp. at 521 n.13. The District Court specifically found based upon the evidence in the record, and the Court of Appeals therefore affirmed, that "California's housing costs are higher than any other state except Massachusetts", and that under the challenged statute "new California residents migrating from 45 of the[] 46 states [with lower AFDC benefits] will face higher costs of living with no increase in their benefits." Pet. App. at A14-15 n.13; *Green*, 811 F. Supp. at 521 n.13.<sup>6</sup>

Petitioners presented no evidence to the District Court which controverted these findings, nor did Petitioners contest the findings on appeal. Further, Petitioners never disputed that Respondents faced irreparable injury or that, as the District Court also found, all were "unable to locate housing in California that is affordable to them on the reduced AFDC payment." Pet. App. at A19; *Green*, 811 F. Supp. at 523.

Thus, contrary to Petitioners' claims (e.g., Pet. at 13, 18-19), the District Court did not hold that "any" penalty would suffice to require heightened scrutiny, but rather that the statute in the present case in fact works severe

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<sup>6</sup> Petitioners do not contend that the District Court's factual findings as then affirmed by the Court of Appeals, were clearly erroneous. Fed. R. Civ. P. 52(a); see also *Baker v. Schofield*, 243 U.S. 114, 118 (1917) (concurrent findings of two lower courts as to matter of fact will not be disturbed unless clearly erroneous.)

deprivation of the basic necessities of life.<sup>7</sup> Whether the deprivation to newcomers of other less fundamental benefits would similarly constitute an impermissible penalty is not a question presented by this case. See *Shapiro*, 394 U.S. at 638 n.21 (expressing no view on validity of residence requirements for such things as tuition, and hunting, fishing, or professional licenses); see also *Memorial Hospital*, 415 U.S. at 259 n.13; *Zobel*, 457 U.S. at 64 n.11; *Dunn v. Blumstein*, 405 U.S. 330, 342 n.12 (1972).

The State also attempts to distinguish this case from *Shapiro* and *Memorial Hospital* because the deprivation of benefits is partial, no matter how drastic, though not total. See, e.g., Pet. at 11. The *Shapiro* court, however, based its holding not on the dollar amount of the reduction in benefits but upon the denial of the ability to obtain basic necessities. *Shapiro*, 394 U.S. at 627. This impact upon the basic necessities of life has been emphasized repeatedly by this Court. See, e.g., *Soto-Lopez*, 476 U.S. at 908 (plurality), 921-922 (O'Connor, J., dissenting); *Zobel*, 457 U.S. at 64 n.11; *Memorial Hospital*, 415 U.S. at 259, 261 (majority opinion), 285, 288 (Rehnquist, J., dissenting). As the courts below determined, "Like *Shapiro*,

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<sup>7</sup> Indeed, uncontroverted expert testimony presented to the trial court explained that durational residency requirements produce an even greater adverse impact on indigent families today than they did a generation ago when they were first struck down by this Court, given the increase in female-headed households since then. These families are least capable of coping with financial hardship, because fewer job opportunities exist for women, because of greater work-related expenses such as child care, and because women who leave with their children are often fleeing domestic violence with no resources or realistic prospect of support from their spouses. Pls.' Ex. 27, ¶4; CR 69.

the measure limits welfare and the basic necessities of life." Pet. App. at A13; *Green*, 811 F. Supp. at 521.

Furthermore, contrary to the State's argument, this Court has invalidated statutes which reduced rather than wholly eliminated benefits to new state residents. Both *Memorial Hospital* and *Zobel v. Williams* involved reductions in benefits based on the length of state residency. Providing partial benefits to new residents rather than denying benefits entirely, did not save either statute. *Memorial Hospital*, 415 U.S. at 260; *Zobel*, 457 U.S. at 63-64. Indeed, two of the statutes found unconstitutional in *Shapiro* itself provided for some assistance to new residents. See 394 U.S. at 622 n.2, and 624 n.3. The Court has several times over decided the question raised by this case.

Indeed, *Shapiro* held that "even under traditional equal protection tests a classification of welfare applicants according to whether they have lived in the State for one year would seem irrational and unconstitutional." 394 U.S. at 638. See also *Soto-Lopez*, 476 U.S. at 915-916 (Burger, C. J., concurring); *Hooper*, 472 U.S. at 623; *Zobel*, 457 U.S. at 65. These cases demonstrate that California's durational residency requirement lacks even a rational relationship to a legitimate state purpose. As the courts below stated, Petitioners did not show - in fact, they could not show - that recent arrivals are somehow better able to live on reduced welfare benefits than long-term residents, and they have provided no "sensibl[e]" reason for discriminating against these needy families other than for the impermissible purpose of deterring their migration. Pet. App. at A17-18; *Green*, 811 F. Supp. at 522-23.

Thus, even under the rational basis review urged by Petitioners, the result in this case would be the same. For this reason as well this case does not merit review.

## II. THIS CASE PRESENTS NONE OF THE FACTORS THAT WOULD WARRANT OVERRULING A QUARTER-CENTURY OF THIS COURT'S PRECEDENTS ON RESIDENCY DISCRIMINATION.

Undoubtedly recognizing that *Shapiro* and its progeny control the outcome of this case, Petitioners ask this Court to overrule these cases. In making this argument, however, the State entirely ignores the principles of *stare decisis*.

"[T]he very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable." *Planned Parenthood v. Casey*, \_\_\_ U.S. \_\_\_, 112 S. Ct. 2791, 2808 (1992). This Court has stated that while the principles of *stare decisis* cannot be applied mechanically, the doctrine is of fundamental importance in ensuring that our "jurisprudential system . . . is not based upon 'an arbitrary discretion.'" *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989).

A party seeking to overrule precedent must therefore demonstrate extraordinary reasons before the Court will reconsider settled precedent. These reasons have included:

[W]hether the rule has proved to be intolerable simply in defying practical workability; whether the rule is subject to a kind of reliance that



would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; or whether facts have so changed or come to be seen so differently, as to have robbed the old rule of significant application or justification.

*Casey*, 112 S. Ct. at 2808-2809 (citations omitted). In addition, the Court has required that the question be answered whether the old rule "after being . . . tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare." *Patterson*, 491 U.S. at 174 (citations omitted).

Petitioners, while citing *Casey*, do not address these considerations or otherwise provide support for their assertion that this is a case where the principles of *stare decisis* should be set aside.<sup>8</sup> The State's only argument is that "[i]n light of the budget crises that California and other states have been facing, the principles of *Shapiro* are unworkable and should be reconsidered." Pet. at 18.

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<sup>8</sup> Petitioners cite *United States v. Dixon*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 2849, 2864 (1993) for the proposition that *stare decisis* should be ignored. However, *Dixon* involved a single and relatively recent precedent, *Grady v. Corbin*, 495 U.S. 508 (1990). The Court decided to overrule *Grady* because it was a new rule that itself contravened an "unbroken line of decisions," contained "less than accurate" historical analysis, and had produced "confusion." *Id.* The circumstances here could scarcely be more opposite. It is Petitioners who are challenging a large body of law stretching back a quarter of a century that has produced no confusion and contained no inaccurate historical analysis.

States have attempted to use budgetary problems to justify discriminatory residency requirements in *Shapiro* and in each subsequent case. The various defendants involved in *Memorial Hospital* and *Shapiro* also pled drastic budget problems in defense of their durational residency laws. See, e.g., Brief of Maricopa County at 9-10, *Memorial Hospital* (No. 72-1917); Brief of State of Pennsylvania at 14, *Shapiro* (Nos. 68-9, 68-33, 68-34); Brief of State of Connecticut at 17, *Shapiro* (Nos. 68-9, 68-33, 68-34). The Court uniformly repudiated these claims. *Memorial Hospital*, 415 U.S. at 263; *Shapiro*, 394 U.S. at 633.

The argument that a budget crisis can justify circumventing the Constitution is particularly disingenuous here considering the relative amounts involved, even accepting at face value the State's own figures. The State estimated, for example, that it would save \$22.5 million in state funds in the 1993-94 fiscal year. Pet. App. at A22, ¶15. This is less than one percent of the \$2.8 billion in state funds California expected to spend on AFDC alone in fiscal year 1992-1993. Pet. App. at A23, ¶12. Moreover, the State could have accomplished the same savings and avoided the invidious discrimination simply by reducing the State's portion of grants to all AFDC recipients by a mere 76 cents per month.<sup>9</sup>

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<sup>9</sup> The 76 cents per month figure was derived by dividing the estimated annual savings of \$22.5 million by the number of AFDC recipients in California (2,458,600 per month according to the State, Pet. App. at 23, para. 2) and then dividing by twelve. The actual monthly cut per recipient would be about a dollar and a half when federal matching funds are included. See Pet. App. at 21, ¶12.

Faced with the reality that fiscal savings to the State from this measure are minimal, Petitioners are forced to take the extreme position that "[t]he degree to which the Statute relieves the state's fiscal crisis is . . . of no constitutional significance." Pet. at 16 (emphasis added). Petitioners fail to cite any authority for this novel position; certainly it is inconsistent with their request that this Court elevate such fiscal reasons as a basis for abandoning twenty-five years of doctrine.

Finally, this Court and other federal and state courts throughout the country have relied on *Shapiro* without any difficulty. The holding has been routinely applied to cases involving welfare benefits as well as other issues. See, e.g., *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903-906 (1986); *Memorial Hospital*, 415 U.S. 250, 269 (1974); *Dunn v. Blumstein*, 405 U.S. 330, 338-343 (1972); *Lowrie v. Goldenhersh*, 716 F.2d 401, 412-413 (7th Cir. 1983); *Eddleman v. Center Township*, 723 F. Supp. 85, 88-89 (S.D. Ind. 1989); *Starns v. Malkerson*, 326 F. Supp. 234, 237-238 (D. Minn. 1970), *aff'd*, 401 U.S. 985 (1971); *Opinion of the Justices*, 257 N.E.2d 94 (Mass. 1970); *Mitchell v. Steffen*, 504 N.W. 2d 198 (Minn. 1993) *cert. denied sub nom. Steffen v. Mitchell*, No. 93-720, \_\_\_ U.S. \_\_\_, 114 S. Ct. 902 (1994); *Nielsen v. Social Service Board of North Dakota*, 216 N.W.2d 708, 713-715 (N.D. 1974). Indeed, the District Court in this case applied this Court's precedents in a memorandum decision issued barely a month after the case was filed, and a unanimous panel of the Court of Appeals summarily affirmed within two weeks of oral argument.

In fact, it is the State's proposed rule that is inherently unworkable. The State suggests that this Court adopt a multi-factor "undue burden" test comparing for

each state the extent to which a particular requirement deters migration. Pet. at 19-20. This formulation would require that courts examine relative standards of living, budgetary impact, and empirical evidence of deterrent effect. The test proposed would surely spawn years of litigation over the validity of various discriminatory schemes. It is precisely this sort of unending inquiry that *Shapiro* has wisely and effectively prevented, and that this Court's jurisprudence on federalism was designed to arrest.

Thus, Petitioners' contention that this case presents issues appropriate for reconsideration by this Court does not merely misconstrue *stare decisis*, but simply ignores its long-standing principles altogether. The State's Petition should be denied.

### III. THIS CASE DOES NOT PRESENT A LIVE CASE OR CONTROVERSY IN LIGHT OF *BENO V. SHALALA*.

The California statute at issue in this case by its express terms is only operative upon approval by the federal government. Cal. Welf. & Inst. Code § 11450.03(b) (West 1994). As Petitioners acknowledge (Pet. at 5 n.4), the Ninth Circuit Court of Appeals on July 13, 1994, vacated the necessary federal approval. *Beno v. Shalala* \_\_\_ F.3d \_\_\_, No. 93-16411, 1994 U.S. App. LEXIS 17043 (9th Cir. July 13, 1994). By letter to the clerk of the Ninth Circuit dated July 29, 1994, the federal appellees stated that they do not intend to challenge the decision of the court. Ex. 1. This case is therefore moot.



In *Beno*, the Ninth Circuit reversed the denial of a motion for preliminary injunction against the imposition by the State of California of reductions in state AFDC benefits. The court held that 42 U.S.C. § 1315(a) required the United States Secretary of Health and Human Services (HHS) to consider factors mandated by the statute and objections submitted to her before granting the state a waiver of a federal mandate otherwise proscribing the reductions. The court vacated the waiver and remanded the case to the district court with instructions to remand to the Secretary for compliance with the statutory mandate.

The residency provision at issue in this case requires as a necessary prerequisite approval by the Secretary of HHS of the very waiver vacated in *Beno*. See Pet. App. at A4; *Green*, 811 F. Supp. at 917 and n.3; *Beno*, 1994 U.S. App. LEXIS at \*3, \*5-\*6. By operation of the requirement, AFDC assistance levels for eligible recipients migrating to California within the past year drop below otherwise federally-mandated levels, and waiver for the residency restriction must be obtained from HHS. See 42 U.S.C. § 1396a(c)(1) (1994); *Beno*, 1994 U.S. App. LEXIS at \*5-\*6. Moreover, under the *Beno* decision, the Secretary cannot reapprove the state's waiver request, or any element of it, without considering plaintiffs' objections, including those objections previously submitted against institution of the residency requirement. *Beno*, 1994 U.S. App. LEXIS at \*63-\*64.

Once the Ninth Circuit vacated the waiver authorizing the cut, the residency requirement itself was automatically extinguished. Petitioners can no longer enforce the requirement against Respondents. The rule, of course, is

well-settled that the Court may not " 'decide questions that cannot affect the rights of litigants in the case before [it].' " *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974) (quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)). To avoid issuing a decision which would be merely advisory, this Court should deny the Petition for Writ of Certiorari.

At the same time, it is premature to examine the constitutionality of the previously in force but now invalid residency requirement. Secretary Shalala, upon reviewing of the State's resubmitted waiver request and the objections presented thereto, may well elect to reject the request in its entirety, or that part of it calling for imposition of a residency requirement. But whatever her eventual determination, it has not yet occurred. Respondents not only have had no concrete action taken against them, it is possible that they never will. As such, there is no controversy even ripe for review. See *Reno v. Catholic Social Services*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 2485, 2495-2496 (1993).<sup>10</sup>

On grounds of both mootness and ripeness, the State's petition should therefore be denied. Surely in light of the remarkable character of Petitioners' principal argument in support of review by this Court – that a quarter-century of this Court's jurisprudence on residency discrimination should be overturned – there ought to at least exist a residency requirement for the Court to examine. For now, that condition cannot be satisfied.

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<sup>10</sup> It is also premature to grant review in a case which is only at the preliminary injunction stage and where the Ninth Circuit panel has specifically retained jurisdiction over the case. Cf. Sup. Ct. R. 11.

## CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

DATED: August 26, 1994. Respectfully submitted,

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## Exhibit 1

## U.S. Department of Justice

MJS:ETSwaine  
35-16-3892

(202) 514-1201  
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Washington, D.C. 20530

July 29, 1994

BY FEDERAL EXPRESS

Ms. Cathy Catterson  
Clerk, United States Court of Appeals  
for the Ninth Circuit  
121 Spear Street  
Second Floor  
San Francisco, CA 94105-1566

Re: Beno v. Shalala, No. 93-16411 (decided July 13, 1994)

Dear Ms. Catterson:

On July 20, federal appellees sought an extension of time in which to file a petition for rehearing or rehearing en banc in the above-captioned matter. On July 25, the Court granted our motion, setting August 17 as the last day for filing such a petition.

The purpose of this letter is to inform the Court that we have determined not to file a petition for rehearing or rehearing en banc.



Exhibit 1 Page 2

Thank you for your attention to this matter.

Sincerely,

/s/ E. T. S.

Edward T. Swaine

Counsel for Federal Appellees

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Clare Pastore, Esquire  
Western Center on Law and Poverty, Inc.  
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(6)  
No. 94-197

Supreme Court, U.S.

FILED

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In The  
**Supreme Court of the United States**

October Term, 1994

ELOISE ANDERSON, INDIVIDUALLY AND  
IN HER OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
AND RUSSELL S. GOULD, DIRECTOR,  
CALIFORNIA DEPARTMENT OF FINANCE,

*Petitioners,*

vs.

DESHAWN GREEN, DEBBY VENTURELLA, AND  
DIANA P. BERTOLTI, ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

Petition For A Writ Of Certiorari  
To The United States Court  
Of Appeals, Ninth Circuit

REPLY TO OPPOSITION TO PETITION

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In The

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*Respondents.*

Petition For A Writ Of Certiorari  
To The United States Court  
Of Appeals, Ninth Circuit

REPLY TO OPPOSITION TO PETITION

The petitioners, Eloise Anderson, Director, California  
Department of Social Services, California Department of  
Social Services and Russell S. Gould, Director, California



Department of Finance<sup>1</sup>, ("California") reply to the opposition to the Petition for a Writ of Certiorari as follows:

Contrary to plaintiffs' arguments, this action is not moot, and this Court has yet to address the questions presented by the Petition. The question of the constitutionality of the residency requirement mandated by California Welfare and Institutions Code section 11450.03 ("the Statute") persists despite the invalidation of a federal waiver by the United States Court of Appeals in another case. Also, this Court has yet to address the constitutionality of a residency requirement for public benefits which does not penalize the right to travel. The Statute does not provide for an outright denial of public benefits, does not create permanent distinctions based upon residency, and provides each new resident beneficiary the same amount of Aid to Families with Dependent Children ("AFDC") benefits which were constitutionally permissible in the beneficiary's state of prior residence.

# I

## THIS CASE PRESENTS A JUSTICIABLE CONTROVERSY AND IS NOT MOOT

Plaintiffs' argument that this case is not ripe and is moot, is disingenuous and is based upon a faulty understanding of the Ninth Circuit's opinion in *Beno v. Shalala*,

<sup>1</sup> Mr. Gould was appointed as the Director of the California Department of Finance on August 1, 1993, and as such, is the successor in interest to Thomas Hayes, who was named in the original pleadings. Mr. Gould is automatically substituted as a party in place of Mr. Hayes pursuant to the provisions of Rule 25(d) of the Federal Rules of Civil Procedure.

\_\_\_ F.3d \_\_\_ (No. 93-16411, 1994 U.S. App. LEXIS 17043, 9th Cir. July 13, 1994).

*Beno* is a challenge by AFDC recipients to a five-year experimental project modifying public assistance benefits provided by California under the AFDC program. This demonstration project includes the Statute as one of its components. The United States Secretary of Health and Human Services ("the Secretary") approved the Demonstration Project in 1992. In *Beno*, the Ninth Circuit reversed the denial of a motion for preliminary injunction against the operation of certain elements of the Demonstration Project on the ground that the Secretary had not considered factors mandated by federal law and had not considered objections submitted to her before granting California a waiver of the Medicaid Maintenance of Effort requirement. 42 U.S.C. § 1396a(c)(1).<sup>2</sup> The Ninth Circuit invalidated the federal waiver and remanded the case to the District Court with instructions to remand to the Secretary for additional consideration of the objections previously submitted to her.

The invalidation of the Maintenance of Effort waiver is significant since, under the Statute, the waiver is required for the Statute to be implemented. However, the invalidation of the waiver does *not* render this case moot.

<sup>2</sup> The Maintenance of Effort requirement relates to approval for California's Medicaid program, and reads in pertinent part:

"[T]he Secretary shall not approve any State plan for medical assistance if . . .

(1) the State has in effect [AFDC] payment levels that are less than the payment levels in effect under such plan on May 1, 1988."

The Ninth Circuit opinion is not a final judgment on the merits as only the order denying a preliminary injunction was presented to the Ninth Circuit for review. Furthermore, the Ninth Circuit specifically instructed the District Court to remand California's waiver request to the Secretary for further consideration.<sup>3</sup>

It has long been held by this Court that a case does not become moot by reason of the expiration of "short term orders, capable of repetition, yet evading review . . . ." *Southern Pacific Terminal Co. v. I.C.C.*, 219 U.S. 498, 515 (1911). A controversy does not become moot when the questioned conduct is likely to recur or the "underlying question persists and is agitated by the continuing activities and program of petitioners. . . ." *Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 179 (1968).

In *Carroll*, this Court granted certiorari to review a state court order restraining petitioners for ten (10) days from holding rallies which would tend to disturb and endanger local residents. Petitioners in *Carroll* asserted that their case was not moot because the underlying question as to the power of local government to restrict petitioners' activities and programs persisted, despite the expiration of the ten-day order. Similarly, here the question of the constitutionality of the Statute persists, even though an underlying waiver has currently been invalidated on procedural grounds only. California expects that its renewed waiver request will be approved in a manner

<sup>3</sup> On August 25, 1994, California submitted a renewed waiver request to the Secretary.

which will withstand any future procedural challenge. At that point, the constitutionality of the Statute will still need to be addressed.

Plaintiffs' argument is disingenuous because, if this case is moot for purposes of this petition for writ of certiorari, it then logically follows that petitioners' trial court action should be dismissed and the preliminary injunction dissolved. Presumably, petitioners would not wish to see such a logical and consistent result to their argument.

This case is not moot, and this Court should seize this opportunity to provide guidance to the states and the lower courts on the important issue of constitutional law presented by this case.

## II

### THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED AS THIS COURT HAS YET TO ADDRESS THE ISSUES PRESENTED BY THIS CASE

Plaintiffs fail to recognize the vital importance of the factual differences between the Statute and other residency requirements previously considered by this Court. The critical distinction between the Statute and other durational residency requirements for public benefits is that the Statute does not penalize the right to travel. The Statute does not provide for an outright denial of benefits such as that condemned in *Shapiro v. Thompson*, 394 U.S. 618 (1969) or in *Memorial Hospital v. Maricopa County*, 415 U.S. 25 (1974). Furthermore, the Statute does not create permanent distinctions based on the length of state residency as in *Zobel v. Williams*, 457 U.S. 55 (1982) (size of



payments from oil revenues dependent upon years of residence in Alaska); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985) and *Attorney General of New York v. Soto Lopez*, 476 U.S. 898 (1986) (preferences for veterans based on length of state residency). The Statute explicitly provides that persons subject to the Statute receive *at all times* a constitutionally permissible amount of AFDC benefits: either what they received, or would have received, in their prior state of residence, or (after one year of residency) the full amount of the California grant.

Thus, it cannot be said that the Statute penalizes the right to travel as persons subject to the Statute are not deprived of the basic necessities of life. As noted above, the Statute does not determine eligibility for AFDC benefits; to the contrary, it provides for a constitutionally permissible amount of AFDC benefits. The Statute has no impact on the receipt of Medicaid benefits and, in fact, increases the amount of Food Stamps issued to persons subject to the Statute. (Pet. at 10).

Because this Court has not previously ruled on the question of whether a statute which does not penalize the right to travel may establish a system for the distribution of public benefits based upon, for a limited period of time, length of residency, this Court should grant the petition for writ of certiorari. This is a very important question of constitutional law. The Secretary, the various states and the lower courts all require guidance on this question. As noted on pages 4-5 of the amicus brief in support of the petition submitted on behalf of the Washington Legal Foundation, " . . . numerous state legislatures - including those of Illinois, Iowa, Minnesota, New

York, Wisconsin, and Wyoming - have recently established such requirements." As noted in the opposition to this petition for writ of certiorari, other states have also petitioned for writ of certiorari on this issue.

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### CONCLUSION

This Court should grant the petition for writ of certiorari. This action is not moot. It presents important questions of federal law which have yet to be decided by this Court. By granting the petition, this Court can provide essential guidance on a recurring and important issue.

Dated: September 21, 1994

Respectfully submitted,

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AUG 29 1994

No. 94-197

IN THE  
**Supreme Court of the United States**  
October Term, 1994

ELOISE ANDERSON, INDIVIDUALLY AND  
IN HER OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL  
SERVICES, *et al.*,

*Petitioners,*

v.

DESHAWN GREEN, *et al.*,

*Respondents.*

*On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit*

**MOTION FOR LEAVE TO FILE BRIEF  
AND BRIEF OF**

**THE WASHINGTON LEGAL FOUNDATION; UNITED  
STATES REPRESENTATIVES MICHAEL HUFFINGTON,  
STEPHEN HORN, AND RICHARD POMBO; CALIFORNIA  
SENATORS K. MAURICE JOHANNESSEN, DAVID  
KELLEY, NEWTON RUSSELL, DON ROGERS, BILL  
LEONARD, PHIL WYMAN, TIM LESLIE, AND ROB HURTT;  
CALIFORNIA STATE ASSEMBLY MEMBERS MICKEY  
CONROY, RICHARD K. RAINEY, DEAN ANDAL, PAULA L.  
BOLAND, RICHARD L. MOUNTJOY, JAMES ROGAN, BILL  
MORROW, BERNIE RICHTER, BILL HOGE, DAVID  
KNOWLES, TRICE HARVEY, AND JAN GOLDSMITH**

**AS AMICI CURIAE  
IN SUPPORT OF PETITIONERS**

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Date: August 29, 1994

19 pp



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**IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1994**

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No. 94-197

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**ELOISE ANDERSON, INDIVIDUALLY AND  
IN HER OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL  
SERVICES, *et al.*,**

*Petitioners,*

v.

**DESHAWN GREEN, *et al.*,**

*Respondents.*

---

**On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit**

---

**MOTION FOR LEAVE TO FILE  
BRIEF *AMICI CURIAE* OF  
THE WASHINGTON LEGAL FOUNDATION,  
ET AL., IN SUPPORT OF PETITIONERS**

---

Pursuant to Rule 37.2 of the rules of this Court, the Washington Legal Foundation, *et al.*, respectfully move for leave to file the attached brief *amici curiae* in support of Petitioners. Petitioners have consented to the filing of this

brief.<sup>1</sup> This motion is made necessary by the refusal of Respondents' counsel to provide consent.

*Amici* believe that the Constitution allows reasonable limitations on public assistance based on duration of residence, such as the California provision at issue in this case, as a means of adjusting the burdens of welfare budget cuts away from established residents who may have greater difficulty adjusting to them. The attached brief provides substantial information, not contained in the petition for certiorari, regarding the nationwide effect of the decision below upon similar residency-based programs that other states have authorized. It also supplements the petition for certiorari by discussing the disparate decisions of state supreme courts on this issue.

The Washington Legal Foundation (WLF) is a national non-profit public interest law and policy center with over 100,000 members and supporters nationwide whose interests WLF represents. WLF engages in litigation and participates in administrative proceedings in a variety of areas and devotes a substantial amount of its resources to cases that affect the interests of voters and taxpayers. For example, WLF filed *amicus* briefs in *United States v. Carlton*, 114 S. Ct. 2018 (1994) (validity of retroactive changes in federal tax statute) and *U.S. Term Limits, Inc. v. Thornton* (Sup. Ct. No. 93-1456) (validity of state term limits for Members of Congress).

The twenty-three legislators joining this brief are members of California's delegation to the U.S. House of

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<sup>1</sup> Petitioners' letter of consent to the filing of this brief has been lodged with the Clerk of this Court.

Representatives, the California Senate, and the California State Assembly who strongly support California's position in this case. Those legislators — United States Representatives Michael Huffington, Stephen Horn, and Richard Pombo; California Senators K. Maurice Johannessen, David Kelley, Newton Russell, Don Rogers, Bill Leonard, Phil Wyman, Tim Leslie, and Rob Hurtt; and California State Assembly Members Mickey Conroy, Richard K. Rainey, Dean Andal, Paula L. Boland, Richard L. Mountjoy, James Rogan, Bill Morrow, Bernie Richter, Bill Hoge, David Knowles, Trice Harvey, and Jan Goldsmith — believe that the ruling below unnecessarily and detrimentally limits the state's ability to carry out the budget cuts that have been made necessary by its fiscal crisis.

The participation of the *amici* will assist the Court's informed consideration of the petition and will bring important perspectives to bear. For the foregoing reasons, *amici* respectfully request that the Court grant the motion for leave to file the annexed brief *amici curiae* in support of Petitioners.

Respectfully submitted,

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Date: August 29, 1994



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**IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1994**

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ELOISE ANDERSON, INDIVIDUALLY AND  
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**On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit**

---

**BRIEF OF  
THE WASHINGTON LEGAL FOUNDATION,  
ET AL., AS AMICI CURIAE  
IN SUPPORT OF PETITIONERS**

---

**INTEREST OF THE AMICI CURIAE**

The interest of the *amici* is set forth in the motion accompanying this brief.

## SUMMARY OF ARGUMENT

The California statute at issue in this case, California Welfare and Institutions Code § 11450.03, was enacted in 1992 during a period of fiscal crisis in the state. The statute, a welfare reform measure, establishes a reduced level of benefits under the Aid to Families with Dependent Children (AFDC) program during the first twelve months of a recipient's residence in California. For most new residents, that level is the benefit level they would have received if they were still living in their former state.

The decision below, in declaring this measure a violation of equal protection, has added to the disarray of decisions in the lower courts. Residency-based welfare programs of various types have recently been authorized by Illinois, Iowa, Minnesota, New York, Wisconsin, and Wyoming. In suits challenging the programs of some of those states, divided state supreme court decisions upholding and invalidating those programs have shown the need for this Court's guidance. In addition, the U.S. Department of Health and Human Services (HHS) has indicated that it has temporarily suspended the approval of residency-based programs, based on the concerns about their constitutionality raised by this litigation — concerns that can be resolved only by guidance from this Court.

The decision below treated this measure essentially as if it were identical to the residency requirements considered in *Shapiro v. Thompson*, 394 U.S. 618 (1969), in which this Court struck down state and District of Columbia laws that prevented newcomers from receiving *any* assistance under the AFDC program for the first twelve months of residence in the state. But unlike the situation in *Shapiro*, in which this Court applied strict scrutiny on the basis that

the programs amounted to a "penalty" on the right of interstate travel, California's denial of an *increase* in a newcomer's former benefit level is hardly a "penalty" on the newcomer's travel in any conventional sense.

Under the properly applicable standard of rational basis review, California's program is justified as a means of reducing welfare expenditures while allocating the reductions so that they fall in greater proportion on those who are relatively better able to absorb them. In comparison with established residents, who may have longstanding ties to a particular area, newcomers who are welfare recipients can more easily adjust to cuts through such decisions as their choice of communities.

Further, if the Constitution is held to require enhanced scrutiny of residency-based programs that states have established solely on their own authority, this Court should consider whether rational basis review should apply when, as here, the state program has been approved by HHS pursuant to congressionally-delegated authority. Finally, if enhanced scrutiny is required in this case despite the federal approval of California's program, this Court should address whether strict scrutiny or an intermediate level of scrutiny is applicable.

## ARGUMENT

### I. THE VALIDITY OF RESIDENCY-BASED WELFARE PROGRAMS IS AN ISSUE OF NATIONAL IMPORTANCE

Even if the decision below affected only California's public benefits program, and were irrelevant to the public benefits programs of any other state, the consequences of

the decision below would be considerable. The record indicates that the district court's suspension of the implementation of § 11450.03 was expected to "result in additional, unbudgeted state General Fund costs in the AFDC program of \$8.4 million in fiscal year 1992-93, and \$22.5 million in fiscal year 1993-94."<sup>1</sup> The Ninth Circuit's decision overturned not only the judgment of the California legislature that enacted the statute in 1992, but also that of HHS, which had approved it under 42 U.S.C. § 1315(a) as an "experimental, pilot or demonstration project";<sup>2</sup> in approving the program, HHS was obliged to determine that § 11450.03 "is likely to assist in promoting the objectives of" the federal Aid to Families with Dependent Children program. § 1315(a).

But the reach of the decision below extends far beyond California. Prior to this Court's decision in *Shapiro*, at least forty states had a residency requirement of some kind for welfare assistance. See *Shapiro*, 394 U.S. at 677 (Harlan, J., dissenting). Today, numerous state legislatures — including those of Illinois, Iowa, Minnesota, New York, Wisconsin, and Wyoming — have recently established such requirements. See 305 Ill. Comp. Stat. Ann. § 5/11-30; 1993 Iowa Acts ch. 97 § 3(5); Minn. Stat. § 256D.065;

<sup>1</sup> Declaration of Dennis Hordyk, Assistant Director, California Dept. of Finance, Pet. App. A22.

<sup>2</sup> See Letter from Jo Anne B. Barnhart, Assistant Secretary for Children and Families, to Eloise Anderson, Director, California Department of Social Services, Oct. 29, 1992 (granting approval of California's application for federal waivers under 42 U.S.C. § 1315(a) of various statutory and regulatory requirements to permit implementation of residency-based benefit levels and other welfare reforms). Copies of this and other letters cited herein have been lodged with the Clerk of this Court.

N.Y. Soc. Serv. § 158(f); Wis. Stat. § 49.015; Wyo. Stat. § 42-2-107(a)(iii).<sup>3</sup>

At least one of these states, Wisconsin, received approval for its requirement from the Secretary of Health and Human Services.<sup>4</sup> In the wake of the decision of the district court below, however, HHS has indicated to other states that "until the matter is resolved," it will not approve further applications for approval of residency-based benefit levels because "serious issues" regarding their constitutionality "are currently being litigated."<sup>5</sup>

<sup>3</sup> As discussed in Part II *infra*, some of these statutes have been challenged in the lower courts on federal constitutional grounds.

<sup>4</sup> See Letter from Jo Anne B. Barnhart, Assistant Secretary for Children and Families, U.S. Department of Health and Human Services, to Gerald Whitburn, Secretary, Wisconsin Department of Health and Services, July 27, 1992.

<sup>5</sup> In response to the application of Illinois for approval of its residency-based benefit levels, HHS stated:

I regret to inform you that your application for the waivers necessary to enable Illinois to implement the Relocation to Illinois Project is denied. Serious issues regarding the constitutionality of this provision have arisen, and are currently being litigated. Until the matter is resolved, we are not authorizing further research in this area.

Letter from Laurence J. Love, Acting Assistant Secretary for Children and Families, U.S. Department of Health and Human Services, to Robert W. Wright, Acting Director, Illinois Department of Public Aid, July 30, 1993. See also Letter from Donna E. Shalala, Secretary of Health and Human Services, to Michael Sullivan, Governor of Wyoming, Sept. 1, 1993 (to the same effect).

(continued...)



## II. THE LOWER COURTS ARE IN DISARRAY AS TO THE PROPER STANDARD FOR DETERMINING WHETHER A RESIDENCY-BASED WELFARE PROGRAM IS CONSTITUTIONAL

The need for guidance from this Court as to the standard for evaluating residency-based welfare programs is reflected not only by the uncertainty over the issue in the federal Executive Branch, but also by the recent decisions of state supreme courts, which have reached differing results in considering challenges to those programs.

In *Jones v. Milwaukee County*, 168 Wis. 2d 892, 485 N.W.2d 21 (1992), a divided Wisconsin Supreme Court upheld a sixty-day waiting period for welfare benefits. The Court noted the "unsettled nature of the degree to which a durational residency requirement must impinge upon the right to travel to be unconstitutional," 485 N.W.2d at 901, and quoted this Court's characterization of *Shapiro* in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974):

Although any durational requirement impinges to some extent on the right to travel, the Court in *Shapiro* did not declare such requirements to be *per se* unconstitutional. The Court's holding

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<sup>5</sup> (...continued)

Illinois has implemented its statutory waiting period for certain benefit programs that are wholly state-funded. See Matthew Poppe, *Defining the Scope of the Equal Protection Clause with Respect to Welfare Waiting Periods*, 60 U. Chi. L. Rev. 291, 302 n.77 (1994) (student note).

was conditioned . . . by the caveat that some "waiting-period or residence requirements . . . may not be penalties upon the exercise of the constitutional right of interstate travel." The amount of impact required to give rise to the compelling-state-interest test was not made clear.

485 N.W.2d at 901 (quoting *Memorial Hospital*, 415 U.S. at 256-57) (citations omitted).

The Wisconsin Supreme Court concluded that the statute before it did not amount to a penalty on interstate travel because the duration of the residency requirement was short and because the statute provided for various exceptions (none of which, however, covered the case of an individual or family that migrated to Wisconsin in indigency and without close relatives in the state). 485 N.W.2d at 902-03. Applying the rational basis test, the Court upheld the requirement based on the state's "legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor." *Id.* at 905.

On the other hand, a divided Supreme Court of Minnesota held in *Mitchell v. Steffen*, 504 N.W.2d 198 (1993), *cert. denied*, 114 S. Ct. 902 (1994), that the state could not set a newcomer's welfare benefits for the first six months of residence at "the lesser of the benefits actually received in the last state of residence or the maximum benefits allowable" under Minnesota law. The Court found the limitation to constitute a penalty. 504 N.W.2d at 202. Applying strict scrutiny, the Court found that the statute's

purpose, "to conserve state funds," was not compelling. *Id.* at 203.<sup>6</sup>

The differing conclusions among and within these courts is an inevitable product of the absence of a clear standard in the case law of this Court. Neither *Shapiro* nor subsequent cases indicate whether enhanced scrutiny must be applied to residency-based benefit levels that are shorter than one year in duration or that do not involve a complete deprivation of benefits. As the Third Circuit has observed, "The Supreme Court has yet to articulate why it has applied rational basis review in some right to travel cases and strict scrutiny in others, except to say that where a law cannot meet the minimum rationality requirement there is no need to undertake a more searching inquiry." *Schumacher v. Nix*, 965 F.2d 1262, 1267 (3d Cir. 1992).

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<sup>6</sup> In addition, a New York State trial court has held that a reduced benefit level during the first six months of residency for New York's state-funded Home Relief program violated the federal constitution under either strict scrutiny or a rational relationship test and that it also violated the state constitution. *Aumick v. Bane*, 612 N.Y.S.2d 766 (N.Y. Sup. Ct. 1994). A federal district judge, in approving a consent decree, memorialized his views as to the unconstitutionality of an Indiana residence requirement in *Eddleman v. Center Marion City*, 723 F. Supp. 85 (S.D. Ind. 1989).

### III. CALIFORNIA'S RESIDENCY-BASED WELFARE LEVELS SATISFY EQUAL PROTECTION

#### A. The Residency-Based Benefit Levels Should Not Be Deemed a "Penalty"

The district court decision below, adopted by the Ninth Circuit, found the California program to be a "penalty" on the ground that it treats recent residents of California different from other California residents and involves "necessities of life." Pet. App. A14. Hence, the court held that strict scrutiny was applicable and that the classification could not be justified by the state's interest in "conserv[ing] limited State funds in the hope that the State may do more for those who now and in the past have depended on the State." Pet. App. A16.

As discussed in detail in the Petition, the case law of this Court compels no such result. *See* Pet. at 8-12. In particular, because § 11450.03 generally provides new residents the same benefits that they had been receiving before moving to California, the statute can hardly be said to "penalize" interstate migration in any normal sense of the word.

The court below sought to sidestep this difficulty in its analysis by pointing out that the program "makes no accommodation for the different costs of living that exist in different states." Pet. App. A13. But that is a feature of the federal AFDC program itself, which permits a state to set its benefit level at an amount less than the standard of need it has calculated; under 42 U.S.C. § 602(a), a state is free to "pare down payments to accommodate budget



realities by reducing the percentage of benefits paid or switching to a percent reduction system." *Rosado v. Wyman*, 397 U.S. 397, 413 (1970).

Thus, even a state with no residency-based benefit levels may "penalize" a newcomer in the sense of failing to set benefits at a level commensurate with the costs of living in his or her new state. But this Court has never indicated that such a failure is a violation of the right to travel or of any other constitutional right. Hence, the "rationality review" standard under the Equal Protection Clause is properly controlling in this case.

**B. The Classification Is Justified by the Differing Reliance Interests of Longtime Residents and Newcomers**

The court below found, without analysis, that new residents are "no better able to bear the loss of benefits than a group randomly drawn." Pet. App. A17. This conclusion was error. Residency-based cuts in welfare are a legitimate means of allocating the cuts so that they fall in greater proportion on those who can best shoulder them. In comparison with established residents of the state, who are more likely to have longstanding ties to a particular area, newcomers who are welfare recipients can more easily adjust to cuts through their choice of communities and lifestyles. Accordingly, under a rational basis standard of review, California's program is clearly permissible.

While recipients of public benefits do not, of course, have a constitutional right to continued receipt of their benefits at accustomed levels, a state's desire to respect "expectation and reliance interests" has repeatedly been recognized by this Court as a legitimate objective. *See*,

*e.g.*, *Nordlinger v. Hahn*, 112 S. Ct. 2326, 2333-34 (1992); *United States R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 178 (1980). The pursuit of this objective is proper even if it discriminates against the interests of newcomers. *Nordlinger*, 112 S. Ct. at 2333.<sup>7</sup>

**IV. IF CALIFORNIA'S PROGRAM IS DEEMED TO "PENALIZE" INTERSTATE TRAVEL, THIS CASE PRESENTS IMPORTANT QUESTIONS REGARDING THE PROPER SCOPE AND APPLICATION OF THE SHAPIRO STANDARD**

**A. This Court Should Address Whether A Residency-Based Distinction Is Valid If Authorized By Congress**

As noted, California's program was approved by the U.S. Department of Health and Human Services pursuant to 42 U.S.C. § 1315(a) on October 29, 1992. *See supra* n.2. Hence, even if California's program is held to be a "penalty" upon travel by indigents, the question is not the standard of review to be applied when a state establishes such a program on its own, but the standard of review to be applied when a state establishes such a program with federal authority. The existence of federal approval provides an independent reason for employing a deferential "rationality review" of a state legislature's adoption of residency-based benefit levels.

---

<sup>7</sup> The district court referred to evidence that some supporters of the program regarded it as a means of deterring migration into the state, and indicated that "this may be the purpose," but the court properly declined to make any such factual finding. Pet. App. A15.



In *Shapiro*, the Court found that the Social Security Act as it was then written contained no congressional approval for residency requirements. The Court further indicated in *dicta*, however, that such approval would be unavailing for the states in any event because "Congress is without power to enlist state cooperation in a joint federal-state program by legislation which authorizes the States to violate the Equal Protection Clause." 394 U.S. at 641.

That analysis is truncated, and should be reconsidered by this Court. The Equal Protection Clause ordinarily requires only "rational basis" review of classifications in welfare measures. See *Dandridge v. Williams*, 391 U.S. 471 (1970). The asserted basis for enhanced scrutiny of residency requirements is not the Equal Protection Clause itself, but a right to travel based on some other constitutional guarantee. See *Shapiro*, 394 U.S. at 630 & n.8.

But as Justice Harlan pointed out in dissent, three of the provisions suggested as bases for that right — the Privileges and Immunities Clause of Art. IV, § 2, the Privileges and Immunities Clause of the Fourteenth Amendment, and the Commerce Clause — are inapplicable to Congress and can be overridden by Congress in their application to the states. See *Shapiro*, 394 U.S. at 666-67 (Harlan, J., dissenting). Moreover, as Chief Justice Warren indicated in dissent, the Commerce Clause, as an affirmative grant of power to Congress, provides ample authority for Congress to allow residence requirements by the states. See *Shapiro*, 394 U.S. at 651 (Warren, C.J., dissenting).

## **B. This Court Should Address Whether Strict Scrutiny or Mid-Level Scrutiny Is Applicable To Programs That "Penalize" Interstate Travel**

If a residency-based program such as California's is to be subjected to enhanced scrutiny, this Court should reconsider whether the all but insurmountable standard of "strict scrutiny" is applicable or whether some lesser degree of scrutiny is more appropriate. It is true that the decisions of this Court that have applied an enhanced level of scrutiny in evaluating residence requirements have applied strict scrutiny. See, e.g., *Memorial Hospital*, *supra*; *Shapiro*, *supra*. But it is surely incongruous that a provision of the California Welfare and Institutions Code discriminating against *women* would be judged under a more lenient standard than one discriminating, however modestly, against newcomers.<sup>8</sup> Such an incongruity would also be avoided by judging California's residency-based program under the standards normally applicable for judging welfare measures that do not discriminate against a suspect class. See *Dandridge*, *supra*.

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<sup>8</sup> A gender-based classification must be "substantially related to the achievement" of "important governmental objectives." *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982).

**CONCLUSION**

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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Date: August 29, 1994

MOTION FILED  
AUG 26 1994

No. 94-197

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1994

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ELOISE ANDERSON, individually and in her official capacity  
as Director, California Department of Social Services;  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; and  
RUSSELL S. GOULD, Director, California Department  
of Finance,

*Petitioners,*

v.

DESHAWN GREEN, DEBBY VENTURELLA, and DIANA P.  
BERTOLLT, on behalf of themselves, and all others  
similarly situated,

*Respondents.*

---

On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

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MOTION FOR LEAVE TO FILE BRIEF  
*AMICUS CURIAE* AND BRIEF OF THE  
UNITED STATES JUSTICE FOUNDATION  
AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF  
AS *AMICUS CURIAE* OF THE  
UNITED STATES JUSTICE FOUNDATION  
IN SUPPORT OF PETITIONERS

---

**I. INTERESTS OF THE *AMICUS CURIAE***

The United States Justice Foundation (the "USJF") ("Amicus") moves pursuant to Rule 37 of the Rules of this Court for leave to file the accompanying brief as *amicus curiae* in support of Petitioners. USJF sought written consent to file this brief *amicus curiae* from Petitioners and Respondents. Petitioners provided written consent, which has been lodged with the Clerk of the

Court. Respondents, through their Counsel, American Civil Liberties Union Foundation of Southern California, refused to give consent to file this brief *amicus curiae*.

The USJF is a non-profit corporation organized under the laws of the state of California and dedicated to the preservation of property, civil and human rights. USJF regularly assists individuals and classes, not only to redress individual acts of injustice, but also to promote important public policy matters. USJF has been active in a variety of issues since it was founded in 1979, including significant developments in the law in the fields of tax limitation and welfare reform. During the Supreme Court's October term, 1991, USJF filed a Motion for Permission to File Brief as Amici Curiae and Brief in Support of Respondents in *Nordlinger v. Hahn*, 112 S.Ct. 2326 (1992), the case in which this honorable Court resolved the constitutionality of the California system of real property taxation. In addition, all three members of the Board of Directors of USJF are California residents and taxpayers, and share an interest on behalf of USJF in the stability and reform of the California welfare system.

USJF's active involvement in issues regarding California state government tax and spending policy enable them to provide this Court with an important perspective. In its brief, USJF addresses the equal protection challenge to Welfare and Institutions Code section 11450.03 and specifically discusses the appropriate standard of review and in the alternative California's compelling state interest in this important welfare reform legislation. USJF urges the Court to grant Petitioner's Writ of Certiorari to resolve the constitutionality of state welfare reform programs such as the one advanced by the State of California.

For the foregoing reasons, USJF respectfully requests leave of court to file this brief as *amicus curiae* in support of Petitioners.

Respectfully submitted,

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Dated: August 26, 1994

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IN THE  
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No. 94-197

ELOISE ANDERSON, individually and in her official capacity as Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; and RUSSELL S. GOULD, Director, California Department of Finance,

*Petitioners,*

v.

DESHAWN GREEN, DEBBY VENTURELLA, and DIANA P. BERTOLTT, on behalf of themselves, and all others similarly situated,

*Respondents.*

On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
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BRIEF OF THE UNITED STATES  
JUSTICE FOUNDATION AS *AMICUS CURIAE*  
IN SUPPORT OF PETITIONERS

INTERESTS OF *AMICUS CURIAE*

The USJF is a non-profit corporation organized under the laws of the state of California and dedicated to the preservation of property, civil and human rights. USJF regularly assists individuals and classes, not only to redress individual acts of injustice, but also to promote important public policy matters. USJF has been active in a variety of issues since it was founded in 1979, including significant developments in the law in the fields

of tax limitation and welfare reform. In addition, all three members of the Board of Directors of USJF are California residents and taxpayers, and share an interest on behalf of USJF in the stability and reform of the California welfare system.

USJF's active involvement in issues regarding California state government tax and spending policy enable them to provide this Court with an important perspective.

### SUMMARY OF FACTS AND CASE

Amid serious economic problems, the State of California enacted legislation which requires a twelve consecutive month period of residency in order to receive California Aid to Families with Dependent Children ("AFDC") benefits. Welfare and Institutions Section 11450.03 (the "statute") was approved by the United States Secretary of Health and Human Services and does not deny benefits to new residents. The statute provides the same level of benefits to a new resident as received in the state from which he or she moved from, for a limited period of time.

The Respondents are a class of California residents who applied or will apply for benefits on December 1, 1992 or later. They did not reside in California for the immediate twelve consecutive months before their application for benefits.

On December 21, 1992 a Complaint was filed in District Court by Respondents which sought declaratory and injunctive relief. A day later, the District Court issued a temporary restraining order. The order prevented the State of California from implementing the statute.

A hearing was held at which the Respondents argued that they had suffered irreparable injury because they received a smaller AFDC grant than they would have had they met the twelve month residency requirement of the statute. The Petitioners showed that the State of Califor-

nia did not have funds available to pay the costs which would result if the statute was not implemented. The State's economic picture was so severe that failure to implement the statute would be contrary to the California Constitutional provision mandating a balanced budget. (Calif. Const. Art. IV, § 12(a)).

The District Court ruled for the Respondents and issued an injunction on January 28, 1993. The Court found that since a constitutional freedom to travel was at issue, a strict scrutiny analysis was required. Under that test as applied, California apparently could not convince the District Court that it had a compelling interest in the statute. Since the Respondents had shown to the District Court's satisfaction that irreparable injury would result, an injunction was granted.

On April 29, 1994 the State of California's appeal to the Ninth Circuit resulted in the District Court's opinion being affirmed. The Order was published on April 29, 1994.

### SUMMARY OF ARGUMENT

The right the Respondents seek to enforce in this case is not the Constitutional right of freedom to travel migrate. Respondents, in fact, seek to enforce a right to higher welfare payments. Higher welfare payments are not a fundamental right guaranteed by the U.S. Constitution calling for strict scrutiny by this Court. As such, the State must show only a rational basis for the classification in order to satisfy the appropriate standard of review for equal protection analysis. The District Court therefore erred in identifying the right actually at issue in this case, and applied the wrong standard of review.

In the alternative, if this Court determines that a fundamental right is at issue, *amicus* submits that the State provided ample evidence in support of a conclusion that California has a compelling interest in this case, and the District Court erred in not fully considering and giving



appropriate weight to the evidence of dire economic hardship affecting the State government that was presented, and which is well-known to residents of California.

The decision of the Ninth Circuit to affirm the District Court leaves California with no option but to break the law. If the decision stands, California's Constitutional provision mandating a balanced budget is meaningless, and legitimate efforts by the executive and legislative branches of the State to establish priorities and a policy to control welfare spending will be rejected in favor of a different policy set by the judicial branch. USJF argues that welfare reform and the methods to achieve it have become so controversial that the Writ should be granted in this case, to resolve with finality the applicable standards, Constitutional rights involved, and policy setting mechanisms available to State governments to control welfare spending.

### ARGUMENT

#### I. THE STATUTE DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE

##### A. Background

In 1992, Governor Wilson signed comprehensive legislation intended to reform a welfare system that is straining the state government's treasury at its' seams.<sup>1</sup> Enacted during a time of fiscal calamity for state government, and coupled with unfavorable general economic conditions, SB 485 offered a carefully considered balancing of interests by the political branch of state government intended to provide needed welfare benefits, in a rational manner so that the state might also meet its constitutional obligation to the People to balance its budget and set appropriate tax and spending priorities.

<sup>1</sup> Senate Bill 485, Socs. 1-154, Ch. 722, Stats. 1992.

Welfare and Institutions Code section 11450.03 ("the Statute")<sup>2</sup> was just one of many measures contained in omnibus legislation aimed at reducing the growing costs of the state welfare system while maintaining assistance to needy Californians in the midst of a harshly depressed economy.

The Statute provides, generally, that families who have not resided in the State for 12 months will receive Aid to Families With Dependent Children (AFDC) welfare payments *at the level the family would receive in the state of prior residence*. In this regard, the State of California carefully crafted the legislation to ensure that recipients were not "irretrievably foreclosed" from obtaining benefits. (See *Sonsa v. Iowa*, 419 U.S. 393 at 406 (1975)). The Respondents in the current case are initially able to receive the level of benefits they had been receiving all along. Further, they will eventually receive all of what they seek. Once the residency requirement is met the State will pay these benefits. Welfare and Institutions Code Section 11450.03. California is currently among the *highest paying welfare systems* in the country, the statute for the moment results in lower benefit payments to newcomers from most states.

Thus, the one year durational residency requirement for qualification for California resident level benefits for AFDC recipients changed the law to establish a "home state" level of benefits for newcomers. Other elements of the same package of legislation provided different necessary reforms. The net result of the entire legislation is a reduction of welfare costs generally, in an attempt to control the spiraling expenses of the entire system.

##### B. The Statute Does Not Create a Suspect Classification

Respondents would have this honorable Court believe that grave constitutional issues are at stake in this case. The reality, however, is that Respondent's constitutional

<sup>2</sup> Sec. 37.5, Ch. 722, Stats. 1992.



rights as newcomers to California are not much more affected by the statute at issue than if they wanted to get a divorce<sup>3</sup> or file as a candidate for the state Legislature,<sup>4</sup> or just vote in an election.<sup>5</sup>

What Respondents really seek is higher welfare payments. As Petitioner's point out, however, Congress has left to the states a great deal of discretion in setting levels of welfare payments.<sup>6</sup> These arguments however, are lost on the District Court which erroneously relies on a flurry of case law that, unlike the Statute at issue, implicate the right to travel because they provide *no* benefits to the class in question.

The classification created under Section 11450.03(a) is neutral. It does not discriminate on the basis of any distinct suspect classification. By its terms, the Statute does not explicitly operate to reduce the welfare benefits of newcomers. What it does do, is establish a one year durational residency requirement and provide for aid to newcomers:

"... not to exceed the maximum aid payment that would have been received by that family from the

<sup>3</sup> Sec. 4530(a) of the California Civil Code establishes a durational residency requirement of six months in the state and three months in the county to file a petition for dissolution of marriage.

<sup>4</sup> California Constitution Article IV, § 2(c) establishes U.S. citizenship and a three year state durational residency requirement for candidates for the Legislature, and reads: "A person is ineligible to be a member of the Legislature unless the person is an elector and has been a resident of the legislative district for one year, and a citizen of the United States and a resident of California for three years immediately preceding the election. On the facts presented in Plaintiff's papers, Respondent Green is ineligible to run as a candidate for the California Legislature until sometime in 1995.

<sup>5</sup> California Elections Code, § 301 closes registration for purposes of voting in an election 29 days prior to the election.

<sup>6</sup> "Points and Authorities in Opposition to Plaintiff's Request for a Preliminary Injunction," p. 6.

state of prior residence." (Welfare and Institutions Code Sec. 11450.03 (a)).

The District Court received evidence that California is currently paying AFDC recipients at the second highest grant level in the continental United States.<sup>7</sup> But the District Court overlooks the fact that any shortfall created in the level of payments a newcomer will receive under the statute is because California has been one of the most generous states in the nation.

Despite this fact, a hypothetical newcomer from a "higher AFDC benefits" state who seeks aid in California will not be penalized by the Statute. This is important because the case law in this area establishes that the triggering of strict scrutiny occurs with the existence of a "penalty," and the analysis as to whether or not a penalty exists, in turn, depends, in part, on whether or not there is some effect on the "necessities of life." (See Justice Marshall writing for the majority in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 at 259 citing *Shapiro*. A residency requirement however does not necessarily constitute a penalty. In his dissent in *Memorial Hospital*, *supra*, Justice Rehnquist discussed the issue. He wrote:

Since the Court concedes that 'some waiting period[s] . . . may not be penalties,' one would expect to learn from the opinion [how] to distinguish a waiting period which is a penalty from one which is not. Any expense imposed on citizens crossing state lines but not on those staying put could theoretically be deemed a penalty on travel; the toll exacted from persons crossing from Delaware to New Jersey by the Delaware Memorial Bridge is a 'penalty' on interstate travel in the most literal sense of all. But such charges, as well as other fees for use of transportation facilities such as taxes on airport users, have been upheld by this Court. It seems to me that the line to be derived from our prior cases is that some finan-

<sup>7</sup> Declaration of John D. Healy, Page 2.

cial impositions on interstate travelers have such indirect or inconsequential impact on travel that they simply do not constitute the type of direct purposeful barriers struck down in *Edwards* and *Shapiro*. Where the impact is remote the State can reasonably require that the citizen bear some proportion of the state's costs in its facilities. *Memorial Hospital v. Maricopa County*, 15 U.S. 250 at 284. Also see Justice Harlan's dissent in *Shapiro v. Thompson*, 394 U.S. 618 at 661 (1969).

In the instant case, the State of California's residency requirement does not amount to a penalty; it does not affect a necessity of life. The Respondent's benefit level is precisely what it was prior to their move to California. In that regard a heightened level of scrutiny is not required and the state makes an ample argument that a rational basis exists pursuant to the implementation of the statute.

#### C. Disparities Are Constitutional Where There Is a Plausible Reason for the Classification

While the District Court conceded that the Statute does not eliminate AFDC benefits, it wrote that the Statute:

"... produces substantial disparities in benefit levels and makes no accommodation for the different costs of living that exist in different states."<sup>8</sup>

The District Court's decision took no notice of other factors affecting the quality of life in different states, such as employment levels. *Amicus* discusses employment in detail *supra*.

However, disparities are constitutional where a plausible reason exists. Social welfare or public assistance legislation runs afoul of the equal protection clause only if it cannot be said to relate rationally to a legitimate state objective. *Baker v. City of Concord*, 916 F.2d 744, 747, 748 (1st Cir. 1990).

<sup>8</sup> Memorandum and Order of January 28, 1993, Judge Levy, Page 11.

Further, this Court has upheld the implementation of a program which imposed a "grant limit" regardless of the size of the family or the standard of need. See *Dandridge v. Williams*, 397 U.S. 471 (1970). In *Dandridge*, Justice Stewart in writing for the majority stated, "For here we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, and claimed to violate the 14th Amendment only because the regulation results in some disparity in grants of welfare payments to the largest AFDC families . . ." *Dandridge v. Williams*, 397 U.S. at 471 at 484.

*Dandridge* thus articulates a point at issue in the current case: whether a disparity in payment must implicate a constitutional right. The District Court instead chose to focus on the alleged state interference with the freedom of interstate travel. What is at issue, however, is the state economic regulation and not any constitutional right.

The effect of the Statute is to temporarily continue AFDC benefits at the level new California residents received in their home states.<sup>9</sup> The result is not a hardship for these new California residents. Maintaining new California residents temporarily at their home state levels is a plausible purpose supporting the Statute's constitutionality.

The State has demonstrated a plausible purpose or "reasonable basis" in temporarily providing newcomers with benefit levels equal to those receivable in the state of prior residence. See *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 174, 179, 101 S. Ct. 453, 459, 461, 66 L.Ed.2d 368 (1980). Also see generally *Dandridge v. Williams*, *infra*.

#### D. The Standard Should Be Deferential

The Supreme Court has stated that "[I]n structuring internal taxation schemes, the States have large leeway in

<sup>9</sup> "Points and Authorities in Opposition to Plaintiff's Request for a Preliminary Injunction," Page 2.



making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Williams v. Vermont*, 472 U.S. 14, 22, 105 S. Ct. 2465, 2471, 86 L.Ed.2d 11 (1985), quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359, 93 S. Ct. 1001, 1003, 35 L.Ed.2d 351 (1973).

Although Welfare and Institutions Code Section 11450.03 is not a tax statute, if it is struck down such action will directly implicate the state budget as discussed *supra*. Since California is already experiencing serious budget shortfalls, and is required by the California Constitution to balance its budget,<sup>10</sup> *Amicus* submits that while the Statute is not strictly a tax measure, it is nevertheless so necessarily intertwined with state revenue policy as to raise it to the level of broad deference articulated in *Williams* and *Lehnhausen*, *infra*.

#### E. Conclusion

At issue in the present case is a state economic regulation which focuses on a social issue, not a fundamental right to interstate travel and migration such as the lower Court addressed.

As such, a heightened level of scrutiny is not required and therefore the State of California needs to show only a reasonable basis behind the regulation. Given California's economic problems; its legitimate interest in balancing its budget as required by the state Constitution; the fact that no penalty is imposed and no necessity of life is directly affected; the *Amicus Curiae* respectfully submit that the decision of the District Court and Court of Appeals were in error, and that the Supreme Court should grant Petitioner's Writ of Certiorari to give full consideration to the important implications to state welfare reform and constitution rights presented in this case.

<sup>10</sup> California Constitution Article IV, § 12(a).

## II. THE STATE HAS DEMONSTRATED A COMPELLING INTEREST IN THE STATUTE

Even if the Court determines that fundamental rights are involved in this case, *amicus* submits that alternately the state has presented evidence that meets its burden, and demonstrates that the Statute is necessary to achieve an overriding purpose to control government spending during an era of severe economic depression.

#### A. The State's Interest

Under the strict scrutiny standard, a law will be upheld only if it is necessary to achieve a compelling or overriding government purpose. *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322 (1969). The burden of proof is on the Government. (*Id.*). The State's papers and the evidence submitted in the Declarations of Dennis Hordyk, Assistant Director of the California Department of Finance, John D. Healy, Chief Deputy Director of the California Department of Social Services, and Michael C. Genest, Deputy Director of the Welfare Programs Division of the California Department of Social Services, support a conclusion that the State of California is experiencing such extraordinary financial problems that the Statute should be upheld as a necessary and prudent measure, among others needed, to address the problem of huge spending obligations and reduced tax revenue.

The Hordyk Declaration offers that the State is facing a significant financial shortfall:

"the Department of Finance is projecting a \$2.1 billion deficit in the state's general fund. The budget deficit is so severe that the state will have no reserve available to cover the costs of unforeseen events." (Hordyk Declaration at page 1.)

This shortfall comes during a time of declining state revenues, and projected further declines in revenues:



"The Department of Finance is projecting that revenues will actually decline by over \$1 billion from 1992-93. This will be the second year of revenue declines as revenues declined from 1991-92 to 1992-93 by approximately \$1.1 billion. *This is a result of continuing poor performance in the economy.* These revenue declines will require reductions to the 1993-94 fiscal year budget plan beyond those already taken in the 1992-93 budget and the current 1993-94 budget plan." (Hordyk Declaration at page 1, emphasis added.)

The Hordyk Declaration illustrates that failure to implement the statute will result in additional, unbudgeted costs to the state, for which there are no funds appropriated (Hordyk Declaration at page 2).

The Healy Declaration establishes that in the current fiscal year, the state general fund will be charged \$2.8 billion to support AFDC grants. The Declaration then speaks to the necessity of the statute:

"The immense gap between statewide revenues and expenditures has forced the state and the Department to identify areas where expenditures can be reduced and to make reductions in program allocations. Though Welfare and Institutions Code Section 1450.03 by itself will not solve the State's fiscal problem, *it is a necessary and prudent fiscal measure to achieve a balanced budget.*"

The true picture painted by the combined evidence of the Hordyk and Healy declarations, is the following: 1) there is currently an "immense gap" in California between state spending and tax revenues necessary to pay for that spending; 2) the outlook regarding additional tax revenues in future years is even dimmer because of poor economic conditions; 3) this situation has forced the state to make hard decisions about spending reduction; and 4) Welfare and Institutions Code Section 11450.03 is a *necessary* element of a broader package of measures

needed to deal with the looming financial insolvency of California.

In addition, the State of California has a legitimate interest in attempting to prevent welfare fraud. Given the state's financial picture it also has a legitimate interest in developing a plan which will allow the Government to make an assessment of future budget needs relative to public assistance.<sup>11</sup>

#### B. The Statute Is Necessary

The evidence acquires a heightened value when analyzed in the context of the legal requirement in the California Constitution that the state budget must be balanced annually.

Despite the standard of review urged by the State, a clear inference to be drawn from the papers submitted by the State and the Declarations of the officials previously cited is that California is on the brink of financial ruin and that enactment of the Statute is just one of many reforms in the welfare system whose multiplicity of purposes include compliance with the Constitutional requirement of a balanced budget.

The District Court cites *Shapiro, infra*, to support a conclusion that "the conservation of the taxpayers purse" is not sufficient to support a durational residency requirement which implicates the right to migrate between states.<sup>12</sup> However, the present case can be distinguished from *Shapiro* in two significant ways: 1) *Shapiro* involved a durational requirement that carried a penalty in that it denied all benefits, while in the present case there is no penalty because benefits at previous state levels

<sup>11</sup> See *Shapiro v. Thompson*, 394 U.S. 618 at 618. See also Justice Harland's dissent, at page 672 in which he discusses a number of legitimate government interests.

<sup>12</sup> Memorandum and Order of January 28, 1993, Judge Levy, Page 8.

are provided; and 2) a compelling need for the restrictions in *Shapiro* could not be identified.

If a compelling state interest can ever be found by the Court, it will be under circumstances so critical that they constitute an emergency. Such is the case with Welfare and Institution Code § 11450.03 (a). As stated *infra*, the Statute is a part of broader legislation intended to provide welfare reforms. But the District Court failed to consider the *emergency nature* of the legislation.<sup>13</sup> The District Court erred by not giving this evidence and other evidence supplied by the State appropriate weight in establishing a compelling state interest in support of the Statute.

The State has made the case that an emergency situation exists, and has shown a compelling interest by any characterization of the need to uphold the one year durational residency requirement to receive higher benefits. However, the District Court also had available to it common knowledge of the dire economic conditions confronting California, which further supports a finding that the State has a compelling interest and need for this limited measure as one element of an overall effort to control welfare spending.

The State's primary interest at issue is its very financial survival. Extraordinary measures, carefully tailored to minimize their effect on equal protection, are justified to alleviate the pressures on the state budget.

<sup>13</sup> Sec. 154, Ch. 722, Stats. 1992 provides "This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are in order to apply the provisions of this act to the entire 1992-93 fiscal year and so facilitate the orderly administration of the system for providing human services to the people of the state. It is necessary that this act take effect immediately."

The State has many other interests in protecting its solvency, which are compelling. Naturally, a bankrupt state can neither afford to pay its' welfare recipients let alone its' state employees. Again, it is a matter of common knowledge that the State of California was forced to issue \$475 million in I.O.U.s to state employees and others to cover its' bills as a result of these huge deficits (*Wall Street Journal*, June 24, 1992, p. A2).

The Bank of America, Wells Fargo Bank, and Union Bank refused to honor these state currency warrants (*The New York Times*, August 6, 1992, p. A7). The state has a compelling interest in maintaining basic public services, and continuation of these services require that the state pay its' employees. This interest is clearly implicated by spending programs that are grossly out-of-sinc with revenues.

Similarly, the state has a compelling interest during a time of economic instability to contribute to employment in the state to the fullest extent, to ensure economic well-being and a tax base. One effect of the Statute, as offered in the Genest Declaration, will be to promote employment among new California residents (Genest Declaration, p. 2).

In the *Dandridge* case, *infra*, Justice Stewart's majority opinion found a "reasonable basis" for the state's regulation in encouraging employment. The opinion stated: "It is true that in some AFDC families whose determined standard of need is below the regulatory maximum [the] employment incentive is absent. But the equal protection clause does not require that a State choose between attacking every aspect of a problem or not attacking the problem at all." *Dandridge v. Williams*, 397 U.S. 471 at 487 citing *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911).

The Declarations of the Respondents in the District Court make some general references to their interest in finding work in California. However, the employment statistics from the U.S. Department of Labor paint a



much bleaker picture on their job prospects in California than exist in their "home" states, where, according to their evidence, the cost of living is much less. The following table is a comparison of applicable unemployment statistics for 1992 between California and the three states of Respondents prior residence:<sup>14</sup>

State	# Unemployed	Unemployment Rate
California	1,382,450	9.1%
Colorado	102,907	5.8%
Louisiana	149,661	7.7%
Oklahoma	91,423	6%

While California has one of the highest levels of AFDC payments in comparison to other states, it also has among the highest levels of unemployment. The District Court considered largely anecdotal evidence regarding a higher "cost of living" in California in relation to other states to support the need for higher welfare payments to cover what the Respondents alleged were, "the necessities of life." But one necessity of life, namely—a job—and the high level of unemployment in the state, are missing from the District Court's analysis.

Respondents argue that "California and Louisiana are not remotely interchangeable states" when it comes to levels of welfare benefits. The fact is, however, that they do not have to be interchangeable. Respondent Green chose to move to California. The State, in turn, has not denied benefits. The State has afforded Respondent Green the same level of benefits which previously covered any necessities. Further, the State will pay an elevated level of benefits after twelve months. The State will do this, even though facts exist which indicate that Respond-

<sup>14</sup> U.S. Department of Labor, Seasonally Adjusted Local Area Unemployment Statistics, 1992.

ent Green, for example, has a better chance of locating a job in Louisiana than in California.

*Amicus* submits that a limited measure which has the affect of discouraging some migration is made compelling not only because of severe budget shortfalls, but also because of the eroding job base in this state. This eroding job base is an outgrowth of the dire economic problems California is experiencing. The state has an interest in deterring further unemployment and higher costs to the welfare system during a time of severe budgetary shortfalls and poor economic conditions. The failure of the lower Courts to recognize these mitigating points is a reason why the Supreme Court should grant Petitioner's Writ of Certiorari.

#### C. The Statute Is Carefully Limited in Scope

The Statute does not deny newcomers public assistance. As discussed earlier, unlike the durational residency requirement in *Shapiro*, *infra*, benefits are in fact provided, and at the same level available in the state of previous residence. Significantly, newcomers are not penalized who migrate to California, and the level of change in benefits is determined by factors outside of and beyond the control of the Legislature.

Support for the notion that the Statute is limited in scope can be found in the evidence offered at trial by Petitioners. Only 6.6 percent of the existing AFDC caseload in California resided in another state within one year of application for AFDC benefits.<sup>15</sup> Of this group, many will not be impacted with the severity Respondents allege because of the variances of state welfare payments. If the law is upheld, the caseload level may be reduced as potential newcomers seek better opportunities in other states. Clearly, the brunt of California's needed welfare reforms will not be carried on the backs of those new-

<sup>15</sup> Declaration of John D. Healy, Page 2.



comers who apply for benefits under the Statute.<sup>16</sup> Much more will have to be done to reduce the budget deficit.

The Statute encourages work, reduces costs, and provides needed welfare assistance. It is a carefully calculated, and necessary step in the right direction, and an important part of a much bigger picture of welfare reform in California.

Respondents minimize the benefit of the cost savings on implementation of the statute and belittle the interest of the State in setting firm economic priorities. They would have the Court believe that all the State needs to do is come up with a few more million dollars for these AFDC applicants. If this Court refuses to grant Petitioner's Writ, Government, its employees and its dependents will suffer as the fiscal crisis over funding of the welfare system and operation of state government continues. The Court will have become, in the words of Justice Harlan, a "super legislature," and the Court will have taken away from the People their right to hold elected officials accountable for the state's welfare system.

The interest involved in this case does not amount to a fundamental right which would require a heightened level of scrutiny. This case concerns an economic regulation and the State of California has shown a reasonable basis for its enactment. However, even if the Court could conclude that the interest of the Respondents is fundamental, the State has shown that its interest should be considered compelling in light of the dire economic circumstances and the Constitutional obligation of the State to balance its budget.

<sup>16</sup> *Id.* Savings on implementing the Statute are estimated to be \$8.4 million in 1992-93 out of a total program of \$2.8 billion in spending.

## CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's Writ of Certiorari.

Respectfully submitted,

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Dated: August 26, 1994

No. 94-197

Supreme Court, U.S.  
FILED

NOV 16 1994

OFFICE OF THE CLERK

In The  
**Supreme Court of the United States**

October Term, 1994

ELOISE ANDERSON, *et al.*,

*Petitioners,*

*vs.*

DESHAWN GREEN, *et al.*,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

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**Petition For Certiorari Filed July 28, 1994**  
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128 pp

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<sup>2</sup> Citations are to the Clerk's Record in the District Court which are the same as those in Appellees' Supplemental Excerpts of Record, Volumes I (CR 69) and II (CR 10, 35, 37), filed in the Ninth Circuit on June 18, 1993.

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## Docket Entries

IN THE UNITED STATES COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DESHAWN GREEN, DEBBY  
VENTURELLA, and DIANA P.  
BERTOLTT, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

Civ. S-92-2118

v.

ELOISE ANDERSON,  
CALIFORNIA DEPARTMENT OF  
SOCIAL SERVICES,  
THOMAS HAYES,

Defendants.

DATE	NR.	PROCEEDINGS
12/21/92	1	MOTION to proceed in forma pauperis by plaintiff Deshawn Green (kh) [Edit date 12/22/92]
12/21/92	2	MOTION to proceed in forma pauperis by plaintiff Debby Venturella (kh) [Edit date 12/22/92]
12/21/92	3	MOTION to proceed in forma pauperis by plaintiff Diana Bertolt [sic] (kh)
12/21/92	4	ORDER by Senior Judge Milton L. Schwartz ORDERING the motions to proceed in forma pauperis by plaintiff Deshawn Green [1-1], by plaintiff Debby Venturella [2-1], by plaintiff Diana Bertolt [3-1] are GRANTED, and FURTHER ORDERING the USM



## DATE NR. PROCEEDINGS

are directed to serve the summons and complaint on defendants without prepayment of costs within 14 days of the date of this order or notify court (cc: all counsel) (kh)

12/21/92 6 COMPLAINT before Honorable David F. Levi referred to Magistrate John F. Moulds Summons issued fee status ifp; Receipt # n/a; Notice re: Consent forms (jy) [Entry date 12/23/02]

12/21/92 7 MOTION by plaintiffs for a TRO for temporary restraining order by pltfs to be heard by MLS (jy) [Entry date 12/23/92]

12/21/92 8 MEMORANDUM by plaintiff in support of motion for temporary restraining order by pltfs [7-1] (jy) [Entry date 12/23/92]

12/21/92 - LODGED order by pltfs granting TRO and preliminary injunction (jy) [Entry date 12/23/92]

12/21/92 9 PROOF OF SERVICE by plaintiffs of motion for temporary restraining order by pltfs [7-1] (jy) [Entry date 12/23/92]

12/21/92 10 MEMORANDUM by defendants in opposition to motion for temporary restraining order by pltfs [7-1]; REQUEST for immediate certification as a class action (jy) [Entry date 12/23/92]

12/21/92 11 DECLARATION of Theodore Garelis in support of defts' memorandum [10-1] (jy) [Entry date 12/23/92]

## DATE NR. PROCEEDINGS

12/21/92 14 NOTICE OF MOTION AND MOTION by plaintiffs for provisiional [sic] class certification by pltfs no hrg date set (jy) [Entry date 12/23/92]

12/21/92 15 MEMORANDUM by plaintiff in support of motion for provisional class certification by pltfs [14-1] (jy) [Entry date 12/23/92]

12/21/92 - LODGED order by pltfs granting the motion for provisiional [sic] class certification (jy) [Entry date 12/23/92]

12/21/92 16 ORDER setting scheduling conference for 11:45 on 2/5/93 before Honorable David F. Levi (cc: all counsel) (jy) [Entry date 12/23/92]

12/21/92 69 EXHIBITS by pltfs in support of the application for a TRO and motion for preliminary injunction (lodged document lodged 12/21/92) (jy) [Entry date 05/24/93]

12/22/92 5 RESPONSE by plaintiffs to the opposition to the TRO filed by the state (jy)

12/22/92 12 ORDER by Senior Judge Milton L. Schwartz GRANTING the motion for temporary restraining order by pltfs [7-1] (cc: all counsel) (jy) [Entry date 12/23/92]

12/22/92 13 ORDER by Senior Judge Milton L. Schwartz GRANTING plaintiffs' proposed order for preliminary injunction; SETTING hearing before DFL on 1/7/93 at 2:00 to show cause why defts should not be enjoined and restrained during the pendency of this

DATE	NR.	PROCEEDINGS
		action from denying full AFDC benefits (cc: all counsel) (jy) [Entry date 12/23/92]
12/23/92	17	ORDER by Senior Judge Milton L Schwartz ORDERING the TRO issued on 12/22/92 shall be EXTENDED and CONTINUED in full force and effect as to all of the terms thereof to and including the day of 1/11/93 at 5:00pm unless sooner terminated by the court (cc: all counsel) (kh)
12/23/92	18	RETURN OF SERVICE of the summons and complaint executed upon defendant CA Dept of Social on 12/23/92 (jy)
12/23/92	19	RETURN OF SERVICE of the summons and complaint executed on Robert Campbell, agent, on 12/23/92 (jy)
12/23/92	20	RETURN OF SERVICE of the summons and complaint executed on the Dept of Finance at the State Capitol on 12/23/92 (jy)
12/23/92	21	LETTER to court from plaintiffs' counsel Legal Aid Foundation of Los Angeles re REQUEST to shorten time for the reasons stated in the related case memorandum with CIVS 92-2135 EJG PAN (jy) [Entry date 12/28/92]
12/23/92	22	NOTICE by plaintiff of related case(s) CIVS 92-2135 DFL PAN (jy) [Entry date 12/28/92]
1/4/93	23	ORDER by Honorable David F Levi ORDERING the court requests USA to file an amicus curiae brief addressing the constitutionality [sic] of their

DATE	NR.	PROCEEDINGS
		waiver provision by 12:00pm on 1/29/93, should the parties wish to respond, replies are due by 12:00pm on 1/26/93 (cc: all counsel) (kh) [Entry date 01/05/93]
1/4/93	-	LODGED request by defts setting deadlines for the motion for preliminary injunction on 1/7/93 (jy) [Entry date 01/05/93]
1/4/93	-	LODGED stipulation to continue hearing on plaintiffs' motion for preliminary injunction (jy) [Entry date 01/05/93]
1/7/93	24	STIPULATION and ORDER by Honorable David F Levi ORDERING the order continuing hearing dates will be entered by the court (cc: all counsel) (kh)
1/7/93	25	ORDER by Honorable David F Levi ORDERING plaintiffs' motion hearing on motion for preliminary injunction is CONTINUED to 1/29/93 at 2:00pm before DFL, defendants reply due by 1/14/93, plaintiff's reply by 1/22/93, TRO to remain in full force and effect (cc: all counsel) (kh)
1/7/93	26	ORDER by Honorable Lawrence K Karlton ORDERING this case is CONSOLIDATED with member cases 2:92-cv-2135 EJG PAN, that action to be REASSIGNED to DFL and JFM, all dates in the REASSIGNED action ONLY are VACATED and a Status Conference in that case is SET for 3/5/93 at 9:15 am before DFL (cc: all counsel) (kh) [Entry date 01/11/93]



DATE	NR.	PROCEEDINGS
1/11/93	27	ANSWER by defendant Thomas Hayes in 2:92-cv-02118, defendant CA Dept of Social in 2:92-cv-02118, defendant Eloise Anderson in 2:92-cv-02118 (kh) [Entry date 01/14/93]
1/14/93	28	NOTICE by defendants of NON-OPPOSITION in 2:92-cv-02118 to pltf's request for provisional class certification (jy) [Entry date 01/20/93]
1/14/93	29	MEMORANDUM by defendants IN OPPOSITION TO the pltf's request for a preliminary injunction (jy) [Entry date 01/20/93]
1/21/93	30	APPLICATION by amicus curiae Coalition of Homelessness of San Francisco to file its memorandum of points and authorities [sic] and accompanying declaration of Michael Wald as amicus curiae IN SUPPORT OF the pltfs' motion for preliminary injunction (jy) [Entry date 01/25/93]
1/22/93	31	PRO HAC APPLICATION of counsel Martha Davis by amicus curiae Coalition of Homelessness of San Francisco; fee status paid (jy) [Entry date 01/25/93]
1/22/93	-	LODGED order granting the pro hac vice application of Martha Davis (jy) [Entry date 01/25/93]
1/22/93	-	LODGED order granting leave to file brief of amici curiae (jy) [Entry date 01/25/93]
1/22/93	32	APPLICATION by amicus curiae NOW Legal Defense for leave to file brief of amicus curiae (jy) [Entry date 01/25/93]

DATE	NR.	PROCEEDINGS
1/22/93	33	PROOF OF SERVICE by amicus NOW Legal Defense in 2:92-cv-02118 of application [32-1] (jy) [Entry date 01/25/93]
1/22/93	34	REPLY MEMORANDUM by plaintiffs IN SUPPORT OF the motion for preliminary injunction (jy) [Entry date 01/25/93]
1/22/93	35	SUPPLEMENTAL EXHIBITS in support of the motion for preliminary injunction (jy) [Entry date 01/25/93]
1/25/93	36	LETTER to court from amicus USA DECLINING to file an amicus brief at this time due to the recent change in administration and evincing a desire to consider filing a brief at a later stage of the proceedings (kh) [Entry date 01/26/93]
1/26/93	37	DECLARATION of Frances Fox Piven in SUPPORT of plaintiff's motion for preliminary injunction (kh) [Entry date 01/27/93]
1/26/93	38	PROOF OF PERSONAL SERVICE by plaintiffs of declaration [37-1] (kh) [Entry date 01/27/93]
1/26/93	39	PROOF OF SERVICE by plaintiff in 2:92-cv-02118 of declaration [37-1] (kh) [Entry date 01/27/93]
1/27/93	-	LODGED order granting the motion to amend the provisional class certification by plfts (jy) [Entry date 01/28/93]
1/27/93	41	NOTICE OF MOTION AND MOTION by plaintiff to amend the provisional class certification by plfts hrg 3/12/93



DATE	NR.	PROCEEDINGS
		at 9:00 ctrm 3 DFL (jy) [Entry date 01/28/93]
1/27/93	42	MEMORANDUM by plaintiffs IN SUPPORT OF THE motion to amend the provisional class certification by pltfs [41-1] (jy) [Entry date 01/28/93]
1/27/93	43	NOTICE OF MOTION AND MOTION by plaintiffs to amend the complaint by pltfs hrg 3/12/93 at 9:00 ctrm 3 DFL (jy) [Entry date 01/28/93]
1/27/93	44	MEMORANDUM by plaintiffs IN SUPPORT OF the motion to amend the complaint by pltfs [43-1] (jy) [Entry date 01/28/93]
1/27/93	45	AMENDED COMPLAINT [6-1] by plaintiffs (jy) [Entry date 01/28/93]
1/27/93	-	LODGED pltfs' order granting the motion to amend the complaint (jy) [Entry date 01/28/93]
1/28/93	40	MEMORANDUM OF DECISION AND ORDER by Honorable David F Levi ORDERING plaintiffs demonstrate that they face the possibility of irreparable injury if the injunction is not issued, all plaintiffs have been unable to locate housing in California that is affordable to them on the reduced AFDC payment, Plaintiff's motion for a preliminary injunction is GRANTED and the court ORDERS: 1) pending judgment in this action, defendants and their agents, assignees and successors in interest are enjoined from implementing a) California Welfare and Institutions Code Sec 11450.03 b) regulations promulgated

DATE	NR.	PROCEEDINGS
		pursuant to Sec 11450.03, All, including but not limited to MPP EAS Sec 89-402.4, c) All County Letter 92-98 and All County Information Notice I-54-92 to the extent that the ACL or ACIN deny standard [sic] CA AFDC benefits to members fo [sic] the plaintiff [sic] class or determine an AFDC benefit in whole or in part by reference to the AFDC grant in any other state or territory (2) Within 10 calendar days of the issuance of this order, defendants shall issue an ACL notifying the counties and Co Welfare directors of this order, and instruct them to stop implementation [sic] of the policy enjoined by this order, defendants shall provide plaintiffs [sic] counsel with a copy of the ACL and 3) plaintiff [sic] will be permitted to proceed in this matter without posting a bond or any other security (cc: all counsel) (kh) [Edit date 02/02/93]
1/28/93	46	MINUTES of the pltf's motion for a preliminary injunction; GRANTED by the court; order to be prepared (jy) [Entry date 01/29/93]
1/28/93	47	ORDER by Honorable David F Levi ORDERING the Coalition on Homelessness of San Francisco is GRANTED leave to file a brief as amicus curiae, in SUPPORT of plaintiff's motion for preliminary injunction (cc: all counsel) (kh) [Entry date 01/29/93]

DATE	NR.	PROCEEDINGS
1/29/93	48	ORDER by Honorable David F Levi ORDERING attorney Martha F Davis is ADMITTED to practice [sic] before this court PRO HAC VICE (cc: all counsel) (kh)
1/29/93	49	ORDER by Honorable David F Levi GRANTING motion for provisional class certification by pltfs [14-1] ORDERING plaintiffs shall provisionally maintain this matter as a class action on behalf of a class consisting of applicants and recipients of AFDC who have applied [sic] or will apply for benefits on or after 12/1/92 and who have not resided in CA for [sic] 12 consecutive months immediately preceding their application for aid (cc: all counsel) (kh)
1/29/93	50	ORDER by Honorable David F Levi ORDERING NOW Legal Defense Education Fund and Equeal [sic] Rights Advocates are GRANTED leave to file a brief as amici curiae (cc: all counsel) (kh)
1/92/93	51	JOINT STATUS REPORT by defendants and plaintiffs (kh) [Entry date 02/03/93]
2/4/93	52	NOTICE OF APPEAL by defendant Thomas Hayes, defendant CA Dept of Social, and defendant Eloise Anderson from Dist Court decision granting a preliminary injunction on 1/28/93 fee status: paid/ receipt 142998) (jy) [Entry date 02/08/93]

DATE	NR.	PROCEEDINGS
2/11/93	53	MAILED case information/docket fee payment notice, copy of Notice of Appeal, copy of the memorandum of decision and order [40-1], and a copy of the docket sheet to the 9th Circuit Court of Appeals and all counsel (jy)
2/12/93	54	STATEMENT by defendant in 2:92-cv-02118 of issue on appeal [52-1] (jy) [Entry date 02/16/93]
2/12/93	55	TRANSCRIPT DESIGNATION and Ordering Form for dates: NO DATES REQUESTED (jy) [Entry date 02/16/93]
2/16/93	56	CERTIFICATE of Record and docket sheet transmitted to the USCA and all counsel (jy)
2/25/93	57	MEMORANDUM by defendants IN OPPOSITION TO the motion to amend the complaint by pltfs [43-1] (jy) [Entry date 03/01/93]
2/25/93	58	MEMORANDUM by defendant in opposition to motion to amend the provisional class certification by pltfs [41-1] (jy) [Entry date 03/01/93]
3/3/93	59	ORDER (TENTATIVE [sic] - to be FINAL 3/5/93 at 12:00pm) by Honorable David F Levi ORDERING the motion to amend the complaint by pltfs [43-1] AND motion to amend the provisional class certification by pltfs [41-1] are DENIED without prejudice to renewal once the 9th Circuit issues its decision (cc: all counsel) (kh)



DATE	NR.	PROCEEDINGS
3/8/93	60	MINUTE ORDER ORDERING a hearing on motion to amend the complaint by pltfs [43-1] and motion to amend the provisional class certification by pltfs [41-1] is SET for 4/23/93 at 9:00am in ctrm 3 and RE supplemental briefing (cc: all counsel) (kh)
3/26/93	61	REPLY MEMORANDUM IN SUPPORT by plaintiff in response to motion to amend the provisional class certification by pltfs [41-1] (1c) [Entry date 03/29/93]
3/26/93	62	REPLY MEMORANDUM IN SUPPORT by plaintiff in response to motion to amend the complaint by pltfs [43-1] (1c) [Entry date 03/29/93]
3/26/93	63	SUPPLEMENTAL memorandum by plaintiff to motion to amend the complaint by pltfs [43-1], to motion to amend the provisional class certification by pltfs [41-1] set for 4/23/93 at 9:00am before DFL (1c) [Entry date 03/29/93]
4/8/93	64	MEMORANDUM by defendants IN OPPOSITION TO the motion to amend the complaint by pltfs [43-1] and IN OPPOSITION TO the motion to amend the provisional class certification by pltfs [41-1] (jy) [Entry date 04/13/93]
4/16/93	65	MEMORANDUM by plaintiff Diana Bertolt [sic], plaintiff Debby Venturella, plaintiff Deshawn Green in support of motion amend the complaint by pltfs [43-1] (1c)

DATE	NR.	PROCEEDINGS
4/16/93	66	NOTICE OF ERRATA by plaintiff (1c)
4/23/93	68	MINUTES of motion hearing before Honorable David F Levi; motion to amend the complaint by pltfs [43-1] is submitted, and motion to amend the provisional class certification by pltfs [41-1] is submitted; order to be prepared by court C/R: C Miller (1c) [Entry date 04/26/93]
4/26/93	67	ORDER by Honorable David F Levi DENYING motion to amend the complaint by pltfs [43-1] and DENYING motion to amend the provisional class certification by pltfs [41-1] (cc: all counsel) (1c)
7/1/93	70	MEMORANDUM OF DECISION AND ORDER by Honorable David F Levi GRANTING motion to dismiss certain claims of pltf's complaint by federal defts [29-1] in 2:92-cv-02135; DENYING motion for a preliminary injunction by pltfs [26-1] in 2:92-cv-02135 (cc: all counsel) (lg) [Entry date 07/02/93]
5/24/94	71	CERTIFIED COPY of Appellate Court Order: AFFIRMING judgment of said District Court (ab)

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DATE	FILINGS-PROCEEDINGS
2/19/93	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): y. setting schedule as follows: CADS due 3/5/93 for Theodore Garelis; appellant's designation of RT is due 2/16/93; appellee's designation of RT is due 2/24/93,, ; appellant shall order transcript by 3/8/93; court reporter shall file transcript in DC by 4/6/93, ; certificate of record shall be filed by 4/13/93; appellant's opening brief is due 5/24/93;

## FILINGS-PROCEEDINGS

appellees' brief is due 6/22/93,, ;  
appellants' reply brief is due 7/6/93;  
[93-15306] (rei)

2/19/93 Filed certificate of record on appeal RT  
filed in DC N/T [93-15306] (ot)

2/19/93 Received Appellant Eloise Anderson notice  
of non-dsgn. of reporter's transcript.  
CASEFILE [93-15306] (ot)

2/26/93 Copy complimentary DC motion received  
from the defendants "Memorandum of  
Points and Authhorities [sic] in Oppposition  
[sic] to Motion to Amend the Complaint"  
CASEFILE [93-15306] (ot)

3/4/93 Filed attorney Dennis Eckart for Appellant  
Civil Appeals Docketing Statement served  
on 3/2/93 (to CONFATT) [93-15306]  
[93-15306] (ot)

3/22/93 Case released from Pre-Briefing Conference  
program. (jr)

5/24/93 Filed original and 15 copies Appellant  
Eloise Anderson's opening brief (Informal:  
no) 21 pages; 5 excerpts of record (1 Exc.  
vol); served on 5/21/93 (minor defcy: No  
Statement of Related Cases) Notified  
counsel. minor brief deficiency response  
due 6/9/93; [93-15306] (ot)

5/24/93 Filed U S Justice Fd's motion to become  
amicus curiae, served on 5/20/93 [WIP-  
PROMO] [93-15306] (ot)

5/24/93 Received Amicus U S Justice Fd's brief in  
15 copies of 19 pages; deficient: motion to  
file pending with PROMO; served on  
5/20/93. [93-15306] (ot)

DATE	FILINGS-PROCEEDINGS
6/2/93	Filed order (Deputy Clerk: cag) The U S Justice Foundation's motion for leave to file amici curiae, the previously rcv amicus brief and any response thereto shall be referred to the merits panel. [93-15306] (ot)
6/8/93	Received appellant Anderson's satisfaction of (minor) brief deficiency. Orig. & 15 copies of the Statment [sic] of Related Cases and a new Table of Contents to reflect the statement of related cases. RECORDS [93-15306] (ot)
6/18/93	Filed original and 15 copies Appellees' Deshawn Green, Debb [sic] Venturella, Diana Bertolt [sic] brief, 47 pages, with an Appendix and 5 Supple Exc. 2 vols: served on 6/18/93 minor defcy: no Statement of Related Cases Notified counsel. appellants' reply brief due 7/6/93; minor brief deficiency response due 7/6/93. record on appeal due 7/6/93; (ot)
6/22/93	Received Amicus Coalition Homeless's brief in 15 copies of 06 pages; deficient: motion needed to file; served on 6/22/93 [93-15306] (ot)
6/23/93	Received Appellees' Deshawn Green, et al. satisfaction of (minor) brief deficiency. Orig & 15 copies of the Statement of Related Cases. RECORDS [93-15306] (ot)
6/24/93	Filed original and 15 copies NOW Legal Defense's brief of 16 pages; served on 6/22/93 [93-15306] (ot)
6/28/93	Filed order: (Deputy Clerk: cag) Coalition on Homelessness of San Francisco's submission is construed as a motion for leave to file an amicus curiae brief.

DATE	FILINGS-PROCEEDINGS
	Construed as such, the motion and any opposition thereto shall be referred to the merits panel. (Motion recvd 06/22/93) [93-15306] (ot)
6/29/93	14 day oral extension by phone of time to file Appellant's reply brief. [93-15306] appellants' reply brief due 7/20/93; (mag)
7/6/93	Filed order (Deputy Clerk: cag) The Coalition on Homelessness of San Francisco (the "Coalition") has provided the court with written consent from both aplts and aples' to file amicus curiae in support of aples'. On its own motion, the court vacates the Jun 28, 1993 clerk's order. The Coalition's amicus curiae brief previously submitted to the merits panel, shall be filed. [93-15306] (ot)
7/6/93	Filed original and 15 copies Amicus Curiae Coalition homeless's brief of 06 pages; served on 6/22/93 [93-15306] (ot)
7/13/93	Filed Deshawn Green, Debby Venturella, Diana Bertolt [sic] additional citations, served on 7/12/93 RECORDS [93-15306] (ot)
7/19/93	Filed original and 15 copies Eloise Anderson reply brief, (Informal: no) 10 pages; served on 7/16/93 [93-15306] (ot)
8/17/93	Received aples' Diana Bertolt [sic], Debby Venturella, Deshawn Green additional citations, served on 8/16/93 RECORDS [93-15306] (ot)
1/28/93	Calendar check performed [93-15306] (mw)
2/13/94	Calendar materials being prepared. [93-15306] [93-15306] (aw)

DATE	FILINGS-PROCEEDINGS
2/15/94	CALENDARED: SAN FRAN Apr 13 1994 9:00 am Courtroom 3 [93-15306] (aw)
3/17/94	Received Aples' Deshawn Green, Debby Venturella, Diana Bertolt [sic] additional citations, served on 3/16/94 PANEL [93-15306] (ot)
4/13/94	ARGUED AND SUBMITTED TO Alfred T. GOODWIN, William A. NORRIS & Diarmuid F. O'SCANNLAIN; Circuit Judges. [93-15306] (jr)
4/29/94	Order filed AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Unsigned, Unpublished. Alfred T. GOODWIN; William A. NORRIS, author; Diarmuid F. O'SCANNLAIN.) FILED AND ENTERED JUDGMENT [93-15306] (ck)
5/23/94	MANDATE ISSUED [93-15306] (ah)
5/23/94	Filed Sarah Elizabeth Kurtz's motion to transfer consideration of costs and attys fees to the d.c., and stipulation by the other side, served on 5/18/94 PANEL (ot)
6/7/94	Filed order (Alfred T. GOODWIN, William A. NORRIS, Diarmuid F. O'SCANNLAIN): the motion to tfr consideration of costs and atty fees on appeal to the D C for the Eastrn Dist of Calif is hereby granted. [93-15306] (ot)
6/13/94	Filed order (Alfred T. GOODWIN, William A. NORRIS, Diarmuid F. O'SCANNLAIN): This Court's Order, Filed Apr 29, 1994, is hereby corrected by inserting the words "the preliminary injunction" between "AFFIRMED" and "for." The Apr 29, 1994 Order is redesignated ORDER FOR PUBLICATION, [93-15306] (ot)

DATE	FILINGS-PROCEEDINGS
8/10/94	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 94-197 filed on 7/28/94. [93-15306] (mlm)

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**Taxpayers Protection Act petition materials (excerpts)**  
(SEAL)

**Governor Pete Wilson**

Paid for by THE REPUBLICAN PARTY OF CALIFORNIA  
1903 W. Magnolia Boulevard  
Burbank CA 91506

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OFFICIAL STATE OF CALIFORNIA  
CONSTITUTIONAL AMENDMENT ENCLOSED

---

\* \* \*

EVEN IF YOU HAVE ALREADY SIGNED A PETITION  
TO PLACE MY TAXPAYERS PROTECTION ACT ON THE  
BALLOT WE STILL NEED YOUR HELP.

\* \* \*

(SEAL) GOVERNOR PETE WILSON

\* \* \*

I have enclosed an official petition to place a constitu-  
tional amendment on the November ballot which will  
help prevent this disaster. It is called the Taxpayers  
Protection Act.

\* \* \*

The Taxpayers Protection Act will:

✓ **STOP** out of state welfare recipients from moving  
to California just to increase their grants.

\* \* \*

**Please return your signed petition today.** Our future  
depends upon it. Remember, even one signature will  
really help.

With greatest urgency,

/s/ Pete Wilson

Pete Wilson  
Governor of California

\* \* \*

---

**Summary from the Secretary of State of the Government Accountability and Taxpayer Protection Act of 1992**

- WELFARE • BUDGET PROCESS
- INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE

Summary from the Secretary of State

\* \* \*

Amends statutes to reduce certain benefits in specified welfare programs.

\* \* \*

**GOVERNMENT ACCOUNTABILITY AND TAXPAYER PROTECTION ACT OF 1992**

This initiative [sic] is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by amending and adding sections thereto, amends, repeals, and adds sections to the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed are printed in underscore type to indicate that they are new.

**PROPOSED LAW**

\* \* \*

Section 6-21 makes statutory [sic] changes to the Welfare and Institutions Code.

**SECTION 6. Section 11254 of the Welfare and Institutions Code is added to read:**

\* \* \*

(c) Notwithstanding the maximum aid payments as specified in subdivision (a), families who have resided in this state for less than twelve (12) months shall be paid an amount calculated in accordance with subdivision (a), but not to exceed the maximum aid payment that could have been received from the state of prior residence.

Limits grants for families living in California less than one year. Grant levels will match levels in previous [sic] state of residence.

Potentially creates additional bureaucracy to determine eligibility and aid formulas for other states.

To determine proper benefit levels under this statute the state would have to keep track of at least 66 different grant levels in other states according to the Congressional Budget Office.

There is no evidence to support the theory that California is a welfare magnet. 85% of children receiving AFDC were born in California - while only 75% of California children are natives. (1964 report of the non-partisan Legislative Analyst).

**Proposition 165 campaign materials (excerpts)**

UNITED CALIFORNIA TAXPAYERS  
Governor Pete Wilson, Chairman

**The Budget/Welfare Reform Act of 1992**

**KEY PROVISIONS OF PROPOSITION 165**

Proposition 165 is a proposed constitutional amendment which will be submitted to the people of California on the November 1992 ballot.

\* \* \*

Specifically, the measure:

\* \* \*

**\* LIMITS WELFARE PAYMENTS TO NEWCOMERS -**

To reduce any incentive to come to California solely for higher welfare benefits, and to keep welfare costs under control, newcomers to California would receive the same level of grant they would have received in their home state;

\* \* \*

[Addresses Omitted In Printing]

\* \* \*

**Key Provisions of Proposition 165:**

\* \* \*

- limits welfare payments to newcomers to prevent people from coming to California just for our welfare benefits, which are nearly twice as high as most big states;

\* \* \*

**Governor's Budget Summary 1992-93 (excerpts)**

**Governor's Budget Summary 1992-93**

(SEAL)

Submitted by Pete Wilson  
Governor  
State of California

to the

California Legislature  
1991-92 Regular Session

**Health and Welfare**

\* \* \*

**Welfare Reform**

The 1992-93 Governor's Budget reflects the fact that it is critical to reform and alter the structure of expenditures in the AFDC program in order to promote personal responsibility and to control unaffordable growth. The Budget assumes implementation of the Governor's proposed AFDC initiative in 1991-92. It is assumed that the Legislature will respond to the fiscal crisis facing California and pass necessary legislation, effective March 1, 1992, to implement the proposed reform. Key elements of the reform include:

\* \* \*

**Residency Requirements.** Under this proposal, the maximum AFDC payment level for a family who has resided in California for less than one year would be based upon the payment rate of the state of their previous residency. General Fund savings are estimated at \$2 million in 1991-92 and \$15 million in 1992-93.

\* \* \*



**Memo to California Legislature  
from Assemblyman Quackenbush**

**Assembly  
California Legislature**

**CHARLES W. QUACKENBUSH  
ASSEMBLYMAN TWENTY-SECOND DISTRICT**

[Addresses and Committee Names Omitted In Printing]

January 28, 1992 [Assemblyman Conroy Jan. 28, 1992  
Date Stamp] [SEAL]

TO: All Members of the Legislature  
FROM: Assemblyman Chuck Quackenbush  
RE: Co-authorship of Governor's reform package -  
relocation grant.

---

As you are aware, part of the Governor's budget package proposes that new arrivals in California receive welfare grants no larger than the maximum aid payment they could have received in the state from which they moved. This reduced grant would only be in effect for the first twelve months of California residency.

This legislation will effect [sic] approximately 50,000 cases, 7% of the welfare population. Of these cases, 36% came from states that make up the nation's ten lowest grant payment states.

This change will create a FY 1992/93 savings of \$25,811,000.

---

Yes, I would like to co-author the Governor's relocation grant proposal.

/s/ Mickey Conroy      Mickey Conroy  
signature                      printed name

Please return before February 6th.

---

News Release from Assemblyman Bill Jones (excerpts)

NEWS RELEASE

[seal]

from

STATE ADDRESS

Assemblyman

State Capitol

BILL JONES

Sacramento, CA 95814

(916) 445-2931

February 14, 1992

Contact: Anne Richards

### JONES ANNOUNCES WELFARE REFORM PACKAGE

SACRAMENTO – Assembly Republican Leader Bill Jones today pushed for passage of seven welfare reform bills that would rein in welfare spending and promote individual responsibility.

The package of bills, authored by Assembly Republicans, could mean savings of over \$1 billion in welfare costs, Jones said.

The bills reflect the welfare reform portion of Gov. Wilson's initiative.

\* \* \*

### ASSEMBLY REPUBLICAN WELFARE REFORM BILLS

\* \* \*

ASSEMBLYMAN CHUCK QUACKENBUSH – California Relocation Grant (AB 2584)

\* \* \*

## CALIFORNIA RELOCATION GRANT PROPOSAL FACT SHEET

### PROPOSAL

- Families moving to California will receive grants, for their first 12 months in California, no larger than the maximum aid payment they could have received in the state from which they moved.
- If the family's state of origin had higher grant levels than California has, then the grant received in California will not exceed California's grant level.
- Families living in California for more than 12 months are not affected.
- The amount of the time spent in California while not on aid counts against the 12-month limit.

### BACKGROUND

Current law provides for one grant amount per family size for all recipients regardless of how long the recipient has resided in the state. Approximately 7% (50,000 cases) of California's AFDC caseload lived in another state within the previous twelve months prior to their application for aid in this state. About half (25,000 cases) were receiving AFDC in the prior state of residence. About 25% of the migrating recipients come from neighboring states (Washington, Oregon, Nevada and Arizona) and 36% come from states that make up the nation's ten lowest grant payment states.

### PROGRAM/CLIENT IMPACT

Seven percent of all new applicant cases in California each month, or almost 2,300 cases, will receive a lower

grant for 6 months. For 1992-93, this equates to an average 9,000 monthly cases that will be affected.

#### FISCAL IMPACT

Total FY 1992/93 savings (AFDC grant savings)  
\$ 25,811,000 less admin cost

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#### **March 9, 1992 California Assembly floor debate and vote on S.B. 366 (excerpts)**

\* \* \*

Clerk: Senate Bill 366. An act relating to Aid to Families with Dependant Children making appropriation therefore and declaring an urgency thereof to take effect immediately.

Speaker: Mr. Costa, on the bill.

Mr. Costa: Yes, Mr. Speaker and Members,

\* \* \*

Realizing that in fact funds are short in California today, it makes a great deal of sense then to insure that incentives are provided for people from other parts of the country, in fact that who might be lured to California if in fact there is evidence to make that case, that people might be willing to come here for the purpose - to benefit from higher assistance. This legislation attempts to take care of that by requiring a one year residency requirement in California for anyone to benefit from the level of assistance that we now provide for people who are residents of California.

\* \* \*

Speaker: Mr. Bates.

Mr. Bates: Mr. Speaker and Members, I rise to oppose this measure. The situation here is that we are blaming the wrong people for what's going on in our society and in our economy. You have a situation where nation-wide people are becoming more and more unemployed as the economy is not working for people. We



now know that in the area of Los Angeles, one out of every seven people who reside in Los Angeles County are on some kind of assistance. Things are falling apart. Things are going to hell in a hand basket. And to some how or other think that the immigrants are the problem is really to deceive oneself. We have an economy that's in terrible disrepair, and so we must ask ourselves, why are immigrants coming to California? Well, they're coming here just as anyone else is coming here. They are coming here because they perceive there are opportunities here. They are coming here because there is a social network that can receive them. They are not coming here for any perceived welfare benefit increases that they somehow or other could get by coming to California. So we are deceiving ourselves if we think somehow or other people are coming to California for welfare benefits. There is no study, there's no analysis, there's no anything that would point out that people are coming here. They're coming here because they have friends here. They're coming here because they hope they can get a job here. They're coming here because they think they can get a better life for themselves and their families. Or in some cases, they are coming here because they are in a terrible situation where you have a women [sic] who has been battered and wants to get out of the area and wants to have a new life and a new opportunity. That's why people are coming to California. This Bill sends a message that says if you're poor, your [sic] down trodden, California doesn't want you. We don't want you to come here, we want you to go someplace else, the land of opportunity is not a land of opportunity for people who are poor. I think that's a wrong message, it doesn't save any money and I think its simply

demagoging [sic] a point that will mean nothing in the long run.

Speaker: Mr. Nolan.

Mr. Nolan: Yes Mr. Speaker, point of order, I think this Bill is improperly before the House, there is no author. There is no senator as an author of this Bill.

Speaker: Mr. Costa is the floor jockey.

Mr. Nolan: No, no, there is no senator . . . this Bill is improperly . . .

Mr. Costa: The Bill is the property of the House, Mr. Nolan. We had a Bill last year that was under similar circumstances and it has a principle co-author, its [sic] the property of this House and we can choose to use it as a vehicle as we do any other vehicle.

Mr. Nolan: My point would be that there is no senator listed anywhere on this Bill, this is a senate bill, it therefore cannot be considered.

Speaker: We had precedence for this last year, I recall a bill by Ms. Morgan. That's a fair question Mr. Nolan, so you'll have the section. Mr. Polanco.

Mr. Polanco: Mr. Speaker and Members, I rise to ask my colleagues not to support this measure. The two million that is identified as cost savings can be in fact two million dollars that we can get from elsewhere. The premise of SB 366 is premised upon disproved myths about California being a welfare magnet. There is no study that documents this to be the case. In fact, the figures that are out there today will show that California

is experiencing no greater an increase in its welfare case-load than other states across the country. The fact of the matter is Members, is that we are in a deep recession. The fact of the matter is, is that there are a million people in California without work. The fact of the matter is, is that unless we turn around this economy we are not going to be able to bring forward the type of prosperity. To pick on the welfare recipient is nothing more . . .

Speaker: Mr. Polanco, let me help you please. Members, please give Mr. Polanco your attention. Mr. Burden, please, Mr. Nolan.

Mr. Polanco: To continue to pick on the welfare recipient is nothing more than a callous, calculated scape goat. If in fact we are interested in wanting to improve and bring about the necessary change in welfare, then we ought to be targeting communities with resources, with assessments so that people can have an opportunity whereby we can assess their skills. Whereby we can begin to provide job opportunities. But the fact of the matter is Members, is that in California a mere seventy thousand new jobs will be created and as the economic trend continues Members, we are going to see middle class america run out of benefits, middle class america having to go to those lines and we are seeing it today. They will increase in numbers, this is a bad proposal, this is a very cheap shot at a population whom sixty percent are children. It is not the type of message that we ought to send to Californians. I ask for a no vote.

Speaker: Mr. Johnson.

Mr. Johnson: Mr. Speaker and Members, I couldn't disagree more with what Mr. Polanco has said

but I think he's right in the conclusion that he reaches that this Bill deserves a no vote. We ought to be able to agree, all of us, Republicans, Democrats, liberals, conservatives, all of us ought to be able to agree that the welfare system in this state just simply does not work. Period. It doesn't work, it's a disgrace. We shouldn't have people suffering. I'm opposed to this Bill because I believe it is unconstitutional on its face. It has been put forward by a governor trying to wrap it in a whole series of issues in an initiative and it's now being supported by a great many democrats for precisely that reason - to defeat the initiative - because they are concerned about it. So the game that is being played here, and lets [sic] be honest, on the part of democrats - lets pass this because public opinion polls show that it's popular and we are confident that the courts are going to throw it out ultimately because it is unconstitutional. We'll have the absurd situation of people coming in to this country from Mexico, from Southeast Asia, from all over the world and being able to go on welfare, AFDC payments immediately the same as if they had lived in California all of their lives but we are going to deny those same level of benefits to people who come here from Arizona or Missouri or some other state. If we were to apply the same logic for example, to the payments that we provide to school districts on average daily attendance and say we're going to provide average daily attendance level for students whose families are long-term residents of California at a given level, but those who have moved recently from Missouri or Arkansas or Texas, we're only going to provide the level of support for the school districts for that child's education that would have been provided in the state that



they moved from. Obviously it's unconstitutional. This is an unconstitutional proposal that probably is going to pass by people who want to support the Governor, who believe we need to do something to reform welfare, and on the part of some who cynically say let's pass it - the courts are going to throw it out - it will weaken the opportunity for the Governor's initiative, should it qualify, to pass. Please vote no.

Speaker: Mr. Quackenbush.

Quackenbush: Question for Mr. Costa. Mr. Costa, where was this Bill amended to reflect all these provisions in it at this time? Was it amended in Human Services or was it amended here on the floor?

Mr. Costa: The measure was amended on the floor.

Quackenbush: Are you aware that it's a carbon copy of my Bill AB 2584, that's now on the Human Services Committee?

Mr. Costa: Well, than [sic] you should like it.  
(laughter)

Quackenbush: I'm just curious, is this the moral equivalent of withdrawing a Bill from Committee? It that what it might be?

Mr. Costa: I don't believe so.

Quackenbush: I'd ask for an aye vote and wondering how I can get on as a co-author, Mr. Costa.

Mr. Costa: I would be more than happy to have you as a co-author.

Quackenbush: I could be the author.

Speaker: Mr. Burton.

Mr. Burton: Why don't you run for the Senate and then you could put your name on it and solve Mr. Nolan's problem. I would have to really agree with Mr. Johnson, I think this a very demeaning Bill to this House, it's a demeaning Bill to the process. We had a residency requirement put in a welfare reform bill some years ago that then Governor Reagan proposed - that was thrown out. What we are saying to children is, if your family happened to come here from another state looking for a job, and even found a job but was then layed [sic] off of that job, and there is no unemployment insurance; there is no other job opportunity, and to take care of your children you must be on welfare, that somehow their stomachs are a little bit smaller than the stomach of the person who lives next door who has lived in this State over a year; that their need for clothing for a young child going to school is a little bit less than the child living across the street who may also be on welfare through no fault of that child, because the parent has been unable to find a job; that somehow that clothing will be a little bit cheaper because they will have some sort of certificate saying they haven't been here a year. I don't intend to vote for this Bill because I think it demeans the process and really demeans this body that in my judgment will overwhelmingly pass the Bill.

Speaker: Mr. Peace.

Mr. Peace: Mr. Speaker, very briefly I would like to associate my remarks to Mr. Johnson who associated his remarks to Mr. Polanco and agree that in fact this



is much ado about nothing. It's a ludicrous proposal. Only I would disagree with the conclusion and say that because it is so ludicrous we ought to vote aye. And the reason that you ought to vote aye is it's one way to get one more ludicrous, silly, deceptive thing segregated away from the otherwise heinous and silly proposal the Governor has put forward for November so that we can talk about the real substantive silly things that he has proposed for November rather than talk about these other silly things that we all agree has no substantive dollar affect on the budget or on any impact of this stuff about people moving from left to right or anything else. So let's pass it, get it out of the way. We can try to tombstone it the Quackenbush Act if we like, and then we can deal specifically with the substance of the proposal the Governor - at least to this date - thinks he wants on the November ballot. Although I understand his political folks have been trying to encourage him to change his mind at this point. But let's hope he doesn't so we once and for all bring this issue to rest. I ask for an aye vote.

Speaker: Mr. Gotch.

Mr. Gotch: Mr. Speaker, thank you. Question for the author. Mr. Costa, question for the author.

Unidentified: Principal co-author.

Mr. Gotch: Yes, question for the principle co-author. Mr. Costa, it's not abundantly clear in reading the Bill that it's your intent to ensure that the California grant would in fact be the ceiling so that anyone who might come from another State that pays a higher grant, for Alaska wouldn't be receiving that state's grant but in fact would receive no more than the State of California. If it

doesn't become any clearer when we get to the Senate, would you object to an amendment that would so clarify?

Mr. Costa: No, the important thing is that the California level be the cap in terms of the highest amount that a recipient could receive. Your point that in Alaska the assistance is higher than that of California's as well as I think one or two other states, that those residents coming from that state would then in fact have to receive a higher benefit, it's stated in the language, and if leg. counsel wants it further clarified, or if we are not satisfied with the response, I will add further language that will make it crystal clear that in fact the California level is the cap and the highest that a recipient could receive.

Mr. Gotch: Thank you. Mr. Speaker, on my own time. It's certainly debateable whether the westward migration is in fact fueled by California as a welfare magnet. I doubt that's the case but none the less the passage of this Bill would certainly lay to rest that question and I would urge an aye vote on the Bill before us today. Thank you.

Mr. Speaker: Mr. Gotch, I just want to remind you that if this Bill goes back to the Senate it's for concurrence only it would not be eligible for amendments without going to conference committee.

Speaker: Mr. Wyman.

Mr. Wyman: Thank you Mr. Speaker and Members. I rise to support this measure.

\* \* \*

[I]t is a legitimate response to the concern, to the fact that California has become a welfare magnet and that people

have come to this State because they see it as an opportunity to max out their welfare level of subsistence for themselves and those that they support – or at least on welfare – have supported by the State. So this is a measure that makes sense. It is part of a proposal that the Governor is putting on the ballot. Maybe this will be defeated so that it will be in its pure form and on the ballot.

\* \* \*

And I think that our constituents in the very high percentiles that have been tested on this issue, wonder why there is any debate on this measure at all. This is excellent law, it should be adopted by this legislature and if this legislature sees not to, than [sic] I assure you it will be adopted in November. I ask for an aye vote.

Speaker: Mr. Harvey.

Mr. Harvey: Yes, Mr. Speaker and Members. I liked this Bill when it was a Quackenbush Bill and I still like it as a Costa Bill. I'd like it a lot better if you'd have accepted our six amendments to do so something real meaningful instead of just chipping at this today. We had six good amendments today that really would reform welfare in this State and get rid of those abusers but the democrats don't want to do that today so I'll take this little piece and take a step forward in this election year at least, and hope that you will join us later on this year to do what's deserving of people of the State of California and take all of our amendments. I'd ask for an aye vote.

Speaker: Mr. Connelly.

Mr. Connelly: Mr. Speaker and Members, very briefly. I'm speaking on this because the discussion has been so theoretical – constitutional or not – it's probably not –

\* \* \*

there is something very real in this Bill. This Bill says that if people move here and if something happens and they go on welfare, they can't receive any more benefits than the state that they came from for twelve months. And for a lot of states that means a very low level. For some southern states it means a level as low as one hundred-twenty dollars a month for a women [sic] with two children. If she moved here this month as an example, with her husband and that husband fled, took off, abandoned her – real world things happen – and she was here with her two children, she could get no more than one hundred-twenty dollars a month to support those children for twelve months in the State of California. Whatever else you think about this Bill on theoretical basis, political strategy basis, somewhere inside of you you've got to know that there are going to be situations where this Bill applies in a fashion that is totally, totally unfair. And for that reason, no other, you ought to vote no.

Speaker: Any further question or debate? Hearing none, Mr. Costa, you may close.

Mr. Costa: Yes, Mr. Speaker and Members, I think there was a lot of comments that were made that all suggest some strong feelings as it relates to this legislation before us. But I think that when you examine everything before us in this legislation, you have to realize that we've made cuts that a lot of people would not concur



with. And when we don't have enough to keep the current system intact – as fraught as that system is with problems – it certainly doesn't make any sense to be expending it for others who are not yet even have come to California.

\* \* \*

And we're balancing our budget on the backs of a lot of Californians that we would prefer in other ways not to have to do so.

\* \* \*

Speaker: All debate having ceased, all time has expired. Clerk will please prepare the roll. It take fifty-four votes. All members vote who desire to vote. All members vote who desire to vote. Clerk will close the roll, tally the vote. Prepare to announce the vote. Ayes fifty-four, nos fourteen on the urgency, ayes fifty-four, nos fourteen on the Bill.

\* \* \*

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**California Department of Housing and Community  
Development March 1992 article (excerpts)**

**CALIFORNIA COMMUNITIES**

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Published By the California Department of Housing  
and Community Development

Vol. 7, No. 1

March 1992

Pete Wilson, Governor

Timothy L. Coyle, Director

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***California Dominates List of Least  
Affordable Housing Markets;***

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***Housing Director Links Barriers to  
State's Competitiveness***

Citing data released in January by the National Association of Home Builders that ranked 17 California cities the top twenty least affordable housing markets in the nation, California's Housing Director stated recently that reducing the cost of housing was vital to the State's efforts to become competitive once again.

\* \* \*

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**Waiver request from the State of California to the  
U. S. Department of Health and Human Services  
(excerpts)**

State of California  
HEALTH AND WELFARE AGENCY  
1600 NINTH STREET, ROOM 460  
SACRAMENTO 95814

(Seal)  
PETE WILSON  
GOVERNOR

TELEPHONE  
(916) 654-3454

FAX  
(916) 654-3343

September 17, 1992

Jo Anne Barnhart, Assistant Secretary  
Administration for Children and Families  
U.S. Department of Health and Human Services  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447

Dear Ms. Barnhart:

Attached is California's Assistance Payments demonstration project proposal pursuant to Section 1315 of Title 42 of the United States Code. Due to the passage of State legislation in support of the provisions, we request that this proposal be reviewed and and [sic] approved as soon as possible.

\* \* \*

The proposed changes are discussed below.

\* \* \*

**CALIFORNIA RELOCATION GRANT**

This proposal reduces the incentive for families to migrate to California for the purpose of obtaining higher

aid payments. This would be accomplished by limiting (for a 12-month period) the grant level for families moving to California to the lesser of California's grant level or the MAP of the State of previous residence.

**RELATIONSHIP TO THE WELFARE REFORM DEMONSTRATION PROJECT**

As you know, we have not yet formally accepted the Terms and Conditions for the Welfare Reform Demonstration Project (WRDP). The WRDP will go into effect only if the voters approve the Government Accountability and Taxpayers Protection Act on the November ballot. Should that occur, the WRDP would supercede the waivers requested here. Thus, we need a section dealing with this contingency in the Terms and Conditions for this waiver.

\* \* \*

**II - FEDERAL LAW AND REGULATIONS TO BE  
WAIVED**

**TITLE IV-A STATE PLAN CHANGES  
TO BE APPROVED**

The following is a listing of the Federal law and regulations to be waived for approval of this proposal.

**FEDERAL LAW AND REGULATIONS**

**Law**

42 USC Section 1396a(c). This section limits reduction of Title IV-A, AFDC payment levels to not less than that in effect in May 1988 without affecting the Medicaid program. We request that this section be waived to the extent that a waiver is required.

\* \* \*

Federal Regulations

45 CFR 233.20 (a)(2). This subsection provides that the standard of need and amount of assistance payment will be applied uniformly throughout the State. This section will be waived as deemed required by DHHS to allow for the different payment levels required by the California Relocation Grant. We request that this section be waived to the extent that such a waiver may be required.

\* \* \*

45 CFR 233.40. This section provides that AFDC cannot be denied due to a residency requirement. This section will be waived to the extent that DHHS deems it required to allow for the reduction of aid, not denial, for persons who have lived in California for less than 12 months under the California Relocation Grant component of this proposal.

\* \* \*

III - COST/SAVINGS INFORMATION  
A - CALIFORNIA ASSISTANCE PAYMENTS  
DEMONSTRATION PROJECT

Cost/Savings Summary  
 In \$' 000's  
 Fiscal Year 1992/93

<u>Component</u>	<u>Total</u>	<u>Federal</u>	<u>State</u>	<u>County</u>
<u>Work Incentives</u>				
Assistance Payments				
Assistance Payments	-250,400	-124,100	-119,900	-6,400
100-Hour Rule				
Assistance Payments	- 20,000	- 9,900	- 9,500	- 800
\$30 and 1/3*	-0-	-0-	-0-	-0-
<u>California Relocation Grant</u>				
Assistance Payments	- 20,700	- 10,300	- 9,900	- 500
Administrative	2,400	1,200	800	400
	*	*	*	

IV - PROGRAM NARRATIVE  
A - PROJECT TITLE  
CALIFORNIA ASSISTANCE PAYMENTS  
DEMONSTRATION PROJECT

INTRODUCTION

\* \* \*

California Relocation Family Grant - A requirement which would reduce the incentive to migrate to California solely to seek higher public assistance benefits.

\* \* \*

## C - DESCRIPTION OF PROJECT COMPONENTS

\* \* \*

### CALIFORNIA RELOCATION GRANT

For families moving to California who have not lived here for at least 12 months, the grant level will be either the maximum aid payment for the same size assistance unit in the state they last resided in or California's computed grant, whichever is less. Families living in California, for more than 12 months prior to application for AFDC are not affected. Grant levels from other States will be updated annually from data received from Health and Human Services.

The purpose of this proposal is to reduce the incentive for families to move to California to receive public assistance.

Approximately seven percent of California's AFDC caseload (50,000) lived in another state within the previous 12 months prior to application for aid in this State. About half (25,000) were receiving AFDC in the prior state of residence. About one-quarter of the migrating recipients are from neighboring states whose MAPs for a family of three are significantly lower than California's MAP of \$663 per month. These states are Washington with a MAP of \$531, Oregon with a MAP of \$460, Nevada with a MAP of \$348 and Arizona with a MAP of \$316. Over one-third (36%), were from states that make up the nation's ten lowest grant payment states, primarily Louisiana with a MAP of \$190, Texas with a MAP of \$184, Arkansas with a MAP of \$204, and Oklahoma with a MAP of \$343.

Under this proposal, it is estimated that 1,500 AFDC-approved applicant cases every month will receive reduced grants. The grant reductions will average \$289 per case.

It is estimated that in fiscal year 1992-93 grant savings will equal \$20.7 million (\$10.3 million Federal, \$9.9 million State and \$500,000 County funds).

\* \* \*

## D - RESEARCH AND DEMONSTRATION METHODOLOGY

### 1 - HYPOTHESES AND OBJECTIVES

Introduction: The following is a listing of the hypotheses associated with each proposal component as well as the intended objectives. This listing will be refined in conjunction with academic professionals selected to assist in finalizing the RFP for the independent project evaluation and finalized with expertise provided by the selected contractor.

\* \* \*

### CALIFORNIA RELOCATION GRANT

#### PROPOSAL:

- Families moving to California will receive grants, for their first 12 months in California, the lesser of the California computed grant amount or the maximum aid payment for the AU of the same size in the state or U.S. Territories from which they moved, plus California's special need allowance.
- If the family's state or U.S. Territories of origin had higher MAP than California has, then the grant



received in California will not exceed California's computed grant level.

- Families living in California 12 months or more are not affected.
- The amount of time residing in California immediately prior to application for AFDC will not count against the 12-month timeframe.

#### OBJECTIVE:

- Reduce the incentive for migration of families to California for the purpose of obtaining higher aid payments.

#### HYPOTHESIS:

- If California's grant levels for incoming applicants are changed to the lesser of California's computed grant amount or the maximum aid payment of the State or U.S. Territories of prior residence, the rate of relocation into California will be reduced.

#### Measurements:

The kinds of data that may be collected include:

- Number of AFDC families migrating to California from other states or U.S. Territories in the twelve-month period prior to and subsequent to implementation of this provision.
- Percentage of caseload that migrated to California from other states or U.S. Territories.

- Number of applicants who were aided in other states or U.S. Territories prior to coming to California.
- Of those families from other states or U.S. Territories, the number and percentage of caseload which came from states or U.S. Territories with lower aid payments.
- Of those families from other states or U.S. Territories, the number and percentage of caseload which came from states or U.S. Territories with higher aid payments.
- Average differential between grants from other states or U.S. Territories and California's.
- Average number of months the applicants from other states or U.S. Territories resided in California before applying for aid.

\* \* \*

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**All-County Information Notice I-49-92 (excerpts)**  
**STATE OF CALIFORNIA - HEALTH AND WELFARE**  
**AGENCY**

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DEPARTMENT OF SOCIAL SERVICES  
 744 P Street, Sacramento, CA 95814

October 16, 1992 [checklist omitted in printing]

ALL-COUNTY INFORMATION NOTICE I-54-92

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: FORMS, NOTICES, AND CHARTS RELE-  
 VANT TO THE AFDC/RCA PROGRAM  
 CHANGES REQUIRED BY THE RECENTLY  
 ENACTED STATE BUDGET

\* \* \*

The purpose of this letter is to provide you with information and materials you will need to implement AFDC changes required by the recently enacted State Budget and the accompanying Legislation, SB 485, Chapter 722, Statutes of 1992 as well as the 1991 amendments to Welfare & Institutions Code Section 11201.5 (100 Hour Rule). As we informed you in ACIN I-49-92, the changes which could take effect as early as December 1, 1992 are:

\* \* \*

**RELOCATION FAMILY GRANT (RFG)**

This provision restricts the grant amount to either the California computed grant or the MAP amount from the prior state of residence (plus California special needs, if applicable), whichever is less. This rule provides that when an AU does not contain any member who has lived in California for at least 12 months, the AU's grant will be

determined using the RFG rule. The RFG rule will continue to apply until at least one member of the AU has resided in California for 12 consecutive months.

\* \* \*

**ATTACHMENTS**

We are providing the following attachments to allow counties sufficient lead-time to plan for implementation and training of staff.

NOTE: If voters approve the Government Accountability and Taxpayers Protection Act (GATPA) in the November 3, 1992 election, Attachments I through VI will not be implemented. We would then provide you with new instructions and material as soon as possible.

\* \* \*

**RELOCATION FAMILY GRANT**  
**Maximum Aid Payments for All Other States and U.S. Territories**

Issued: October 1961

Assistance Unit Size																
STATE	1 CHILD	1 ADULT	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Alabama	\$100	\$100	\$123	\$149	\$168	\$194	\$219	\$250	\$280	\$311	\$342	\$373	\$404	\$435	\$466	\$497
Alaska	326	515	821	923	1025	1127	1229	1331	1433	1535	1637	1739	1841	1943	2045	2147
Arizona	198	198	266	334	401	469	537	605	673	740	808	875	942	1009	1076	1143
Arkansas	81	81	162	204	247	286	331	373	415	457	457	457	457	457	457	457
Colorado	99	214	280	356	432	512	590	652	715	779	840	902	959	1016	1072	1129
Connecticut	356	356	473	581	683	781	884	997	1102	1193	1304	1359	1489	1527	1643	1744
Delaware	201	201	270	338	407	475	544	612	681	750	819	888	957	1026	1095	1164
Dist. of Columbia	258	258	321	409	499	575	676	776	858	943	1025	1081	1162	1215	1281	1329
Florida	180	180	241	303	364	426	487	549	610	671	733	795	857	919	981	1043
Georgia	155	155	235	280	330	378	410	444	470	496	530	568	568	568	568	568
Guam	420	420	537	673	776	874	985	1141	1251	1351	1449	1550	1651	1752	1853	1954
Hawaii	407	407	550	693	835	978	1121	1263	1406	1549	1691	1834	1977	2120	2262	2405
Idaho	208	208	254	315	357	399	433	479	522	566	609	652	695	739	782	825
Illinois	102	212	268	367	414	485	545	574	604	635	669	705	741	781	822	866
Indiana	139	139	229	288	346	405	463	522	580	639	697	756	814	873	931	990
Iowa	183	183	361	426	495	548	610	670	731	791	865	952	1039	1126	1213	1300
Kanasa	239	239	321	396	462	521	580	639	701	760	819	878	937	996	1055	1114
Kentucky	162	162	196	228	285	333	376	419	419	419	419	419	419	419	419	419
Louisiana	71	71	136	190	234	276	315	352	390	426	462	501	540	580	620	662
Maine	127	214	337	453	569	685	801	917	1033	1149	1265	1381	1497	1613	1729	1845
Maryland	167	167	294	377	454	526	579	651	715	773	834	895	954	1013	1073	1134
Massachusetts	392	392	486	579	668	760	854	946	1037	1128	1220	1315	1410	1506	1600	1695
Michigan	96	276	371	459	563	659	792	868	944	1020	1096	1172	1248	1324	1400	1476
Minnesota	250	250	437	532	621	697	773	850	916	980	1035	1089	1142	1195	1248	1301
Mississippi	60	60	96	120	144	168	192	216	240	264	288	312	336	360	384	408
Missouri	135	135	234	292	341	387	430	473	514	554	594	635	675	715	755	796
Montana	86	238	322	405	488	571	654	738	822	861	899	933	967	997	1025	1052

\* For all sizes greater than 15, contact the ICR policy analyst.

\*\* Updated semi-annually effective April 1st and October 1st of each year.



RELOCATION FAMILY GRANT																
Maximum Aid Payments for All Other States and U.S. Territories																
Assistance Unit Size																
STATE	1 CHILD	1 ADULT	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Nebraska	\$222	\$222	\$293	\$364	\$435	\$506	\$577	\$648	\$719	\$790	\$861	\$932	\$1003	\$1074	\$1145	\$1216
Nevada	230	230	289	348	407	466	525	584	643	702	761	819	878	937	996	1055
New Hampshire	145	388	451	516	575	631	707	766	854	902	975	1056	1124	1187	1250	1313
New Jersey	162	162	322	424	488	552	616	680	744	808	872	936	1000	1064	1128	1192
New Mexico	192	192	258	324	389	455	520	586	652	717	783	849	914	979	1044	1109
New York	352	352	468	577	687	800	884	1010	1101	1173	1246	1318	1391	1463	1536	1608
North Carolina	181	181	236	272	297	324	349	373	386	406	430	448	473	496	521	546
North Dakota	108	217	326	401	491	558	616	656	698	740	782	824	866	908	950	992
Ohio	199	199	274	334	413	483	538	601	667	733	800	864	930	996	1061	1127
Oklahoma	95	211	264	341	423	495	565	639	701	762	762	762	762	762	762	762
Oregon	209	310	395	460	565	660	755	840	925	985	1090	1195	1300	1405	1510	1615
Pennsylvania	205	205	316	403	497	589	670	753	836	919	1002	1085	1168	1251	1334	1417
Puerto Rico	132	132	156	180	204	228	252	276	300	324	348	372	396	420	444	468
Rhode Island	327	327	449	554	632	710	800	880	970	1042	1132	1212	1293	1375	1461	1542
South Carolina	124	124	167	210	252	295	337	380	423	465	508	550	593	635	678	720
South Dakota	284	284	357	404	450	497	543	589	635	681	728	774	820	866	912	958
Tennessee	95	95	142	185	226	264	305	345	386	425	467	508	549	589	630	670
Texas	63	75	158	184	221	246	284	308	351	377	420	446	488	514	557	583
Utah	233	233	323	402	470	536	589	618	648	677	705	735	764	793	822	851
Vermont	465	465	567	673	755	845	902	1001	1084	1163	1242	1321	1399	1478	1557	1636
Virgin Islands	120	120	180	240	300	360	420	480	540	600	660	720	780	840	900	960
Virginia	157	157	231	291	347	410	435	435	435	435	435	435	435	435	435	435
Washington	339	339	428	531	624	719	817	943	1044	1044	1044	1044	1044	1044	1044	1044
West Virginia	145	145	201	249	312	360	413	461	477	477	477	477	477	477	477	477
Wisconsin	249	249	440	518	618	709	766	830	879	921	943	963	983	1003	1023	1043
Wyoming	195	195	320	360	390	450	510	575	640	700	765	777	789	801	813	825

\* For AU sizes greater than 15, contact the DSS policy analyst.

\*\* Updated semi-annually effective April 1st and October 1st of each year.

BEST AVAILABLE COPY

**United States Department of Health and  
Human Services waiver approval (excerpts)**  
**DEPARTMENT OF HEALTH & HUMAN SERVICES**

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**ADMINISTRATION FOR CHILDREN  
AND FAMILIES**  
Office of the Assistant Secretary,  
Suite 600  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447

October 29, 1992

Ms. Eloise Anderson  
Director  
California Department of Social Services  
744 P Street  
Sacramento, California 95814

Dear Ms. Anderson:

It is a pleasure to inform you that your application for waivers under section 1115 of the Social Security Act for the Assistance Payments Demonstration Project (APDP) is approved upon your written acceptance of the enclosed Waiver Terms and Conditions. The project period for this activity is November 1, 1992, through September 30, 1997. The waivers necessary to implement the demonstration are identified on the enclosed listing.

I look forward to working with you and your agency on this important initiative.

Sincerely,  
/s/ Jo Anne B. Barnhart  
Jo Anne B. Barnhart  
Assistant Secretary  
For Children and Families

\* \* \*

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
ADMINISTRATION FOR CHILDREN AND FAMILIES

OFFICE OF FAMILY ASSISTANCE

WAIVER AUTHORITY

STATE: California

Waivers of the following provisions of the Social Security Act are provided for the purposes of implementing the Assistance Payments Demonstration Project:

\* \* \*

California Relocation Grant

402(a) and various provisions of the regulations at 45 CFR 233.20(a)(1) and (2) – to allow the State to implement a different method for determining the amount of assistance for those families in the treatment group who have not resided in the State continuously for at least 12 months immediately prior to application. The different method provides an AFDC grant amount equal to the lesser of the amount of aid computed using California's grant computation or the maximum aid payment, not counting special needs, of the State of origin, as determined semi-annually by the State of California.

\* \* \*

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
HEALTH CARE FINANCING ADMINISTRATION

WAIVER AUTHORITY

STATE: California

Waivers of the following provisions of the Social Security Act are provided:

1902(a)(1) – Maintenance of Effort. To permit the State to obtain approvals of new State plans for medical assistance even though the AFDC payment levels under WRDP will be below those levels in effect on May 1, 1988.

\* \* \*

WAIVER TERMS AND CONDITIONS

California Assistance Payments Demonstration Project

SECTION 1: GENERAL ISSUES

\* \* \*

- 1.2 If State statutes providing the authority to implement the California Welfare Reform Demonstration Project (WRDP) are enacted prior to December 31, 1992, then this demonstration project will be terminated.

\* \* \*

California APDP Terms and Conditions      October 1992

[Section 2: IMPLEMENTATION]

- 2.2 Under APDP, the state will implement the following provisions requiring waivers:

\* \* \*

- Provide to families who have moved to California from another State and have not resided in California



continuously for at least 12 months immediately prior to application, an AFDC grant amount equal to the lesser of the amount of aid computed using California's grant computation or the maximum aid payment not counting special needs of the State of origin. The maximum aid payment of the State of origin will be determined semi-annually by the State of California.

\* \* \*

Bidders will be asked to explain in detail how the impact of APDP on the migration of recipients from other states to California can be determined using non-experimental methodologies.

\* \* \*

- 3.12 The evaluation will also include a study of the entry effects of APDP and the impact that APDP has on migration to California from other States. These components of the impact evaluation will be accomplished using non-experimental methods.

\* \* \*

# California Ballot Pamphlet for General Election (excerpts)

California

## BALLOT PAMPHLET GENERAL ELECTION

November 3, 1992

\* \* \*

- 165 Budget Process. Welfare. Procedural and Substantive Changes. Initiative Constitutional Amendment and Statute.

\* \* \*

Analysis by the Legislative Analyst

\* \* \*

## PUBLIC ASSISTANCE PROGRAMS

\* \* \*

*AFDC Program Changes*

\* \* \*

**Residency Requirement.** The measure provides that during their first 12 months of residence in California, AFDC applicants from other states are eligible for a grant based on the *lesser* of the grant they would receive using California's eligibility requirements or the MAP in their former state. Given California's grant levels relative to other states, this provision would reduce the grants for most new arrivals.

\* \* \*

165 Budget Process. Welfare. Procedural and Substantive Changes. Initiative Constitutional Amendment and Statute.

Argument in Favor of Proposition 165

\* \* \*

THE AVERAGE WELFARE RECIPIENT WOULD NEED A JOB PAYING \$1,400 PER MONTH TO EARN MORE WORKING THAN STAYING ON WELFARE. No wonder people move to California to collect welfare.

\* \* \*

Proposition 165 reforms welfare:

- New state residents would receive no more in welfare here than in their home state, to end California's status as a welfare magnet.

\* \* \*

PETE WILSON  
Governor  
State of California

\* \* \*

California Secretary of State's  
vote tally on Proposition 165 (excerpts)

STATE OF CALIFORNIA  
SECRETARY OF STATE  
MARCH FONG EU

SEMI-OFFICIAL CANVASS  
STATEWIDE RACES DETAIL REPORT

PAGE: 32

DATE: 11/05/92

TIME: 08:57

NOVEMBER 3, 1992 GENERAL ELECTION

PROPOSITION (CONT'D)

- COUNTY NAME -	PRECINCTS		PERCENT RPTD
	TOTAL	RPTD	
	*	*	*
STATE TOTALS =	25,942	25,942	100.0

BUDGET/WELFARE INIT.

PROPOSITION 165  
FOR                  AGAINST

\* \* \*

4,512,965	5,255,308
46.2	53.8

DUE TO ROUNDING OFF OF NUMBERS, SOME PERCENTAGES MAY NOT TOTAL 100.0%

**All-County Letter 92-98 (excerpts)**

STATE OF CALIFORNIA -  
HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES  
744 P Street, Sacramento, CA 95814

November 6, 1992 [Checklist  
omitted in printing]

ALL-COUNTY LETTER NO. 92-98

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: IMPLEMENTATION OF THE AFDC/RCA  
PROGRAM CHANGES REQUIRED BY THE  
RECENTLY ENACTED STATE BUDGET

\* \* \*

The purpose of this letter is to notify you that the AFDC Program changes contained in ACIN I-54-92, which was recently released with information and materials, are to be implemented effective December 1, 1992.

As you know, the Government Accountability and Taxpayers Protection Act (GATPA) was not approved on November 3, 1992. However, Federal waivers have been approved to implement the following provisions:

\* \* \*

**RELOCATION FAMILY GRANT (RFG)**

This provision restricts the grant amount to either the California computed grant or the MAP amount from the prior state of residence (plus California special needs, if applicable), whichever is less. This rule provides that

when an Assistance Unit (AU) does not contain any member who has lived in California for at least 12 months, the AU's grant will be determined using the RFG rule. The RFG rule will continue to apply until a member of the AU has resided in California for 12 consecutive months.

\* \* \*

Questions & Answers

\* \* \*

**RELOCATION FAMILY GRANT (RFG)**

**Implementation**

Implementation is effective prospectively on December 1, 1992.

Recipients and those who have filed an application for cash aid prior to December 1, 1992 are unaffected by RFG rules.

Any applicant family who applies on or after December 1, 1992 must be evaluated for RFG.

\* \* \*

Q3. What if the family left on October 31, 1993 to live in another state and returned on December 15, 1993?

A The RFG would apply because in December the family would not have lived in California for 12 consecutive months prior to application. The family would be subject to 12 full months of RFG.

\* \* \*



Q5. Does the RFG rule apply if children from another state move in with an unaided caretaker relative who is a California resident? (No other eligible children)

A Yes, RFG applies because the non-needy caretaker is not a member of the AU.

\* \* \*

Q10. A family moves to California from Oregon. Does the RFG rule apply if the family was not on aid in Oregon?

A Yes, the RFG rule will apply regardless of whether a family was on aid in their former state. RFG will apply until at least one member of the AU has lived in California for 12 consecutive months.

Q11. Does the RFG rule apply to applicants who have moved to California from another country?

A No, only from other states or U.S. Territories that have AFDC.

\* \* \*

Q15. When computing the RFG payment, is Homeless Assistance added to the former state MAP prior to the comparison with the California computed grant?

A No, Homeless Assistance, proration and overpayment adjustments are applied after the aid payment is determined.

Q16. If the client provides verification that the grant amount from their former state is larger than the chart amount, which amount should the CWD use?

A The CWD shall always use the chart amount which will be updated semiannually by SDSS.

\* \* \*

Q19. Homeless Assistance Permanent Housing payments, RISP payments and overpayment adjustments are all based on MAP amounts for a particular AU size. Which MAP is used to determine any of the above for a RFG case?

A Use the lesser of either the California MAP or the prior state MAP in the computation of the above.

Q20. If a family moves to California and immediately applies for AFDC and has a 12 month RFG period, would the birth of a new baby in California make the family eligible to a California grant?

A No, neither the newborn or any other member of the AU has lived in California for 12 consecutive months.

\* \* \*

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**Proposed Emergency Regulations of the California State  
Department of Social Services (excerpts)**

**NOTICE OF PROPOSED CHANGES  
IN REGULATIONS OF THE STATE  
DEPARTMENT OF SOCIAL SERVICES**

\* \* \*

**ITEM #4 - AID PAYMENT  
DEMONSTRATION PROJECT**

\* \* \*

RDB #1092-35

**FINDING OF EMERGENCY**

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

\* \* \*

Adopt Chapter 89-400 and Section 89-402 to read:

<u>89-400</u>	<u>AID PAYMENTS</u>	<u>89-400</u>
<u>89-402</u>	<u>MAXIMUM AID PAYMENT (MAP) LEVEL AND MAP RESTRICTION</u>	<u>89-402</u>
<u>.1</u>	<u>MAP Amount</u>	
	<u>HANDBOOK BEGINS HERE</u>	
	<u>Effective December 1, 1992, the MAP level established in Welfare and Institutions Code Sections 11450(a)(1) and (2) is:</u>	

<u>Size of AU</u>	<u>MAP</u>
<u>1</u>	<u>\$ 307</u>
<u>2</u>	<u>504</u>
<u>3</u>	<u>624</u>
<u>4</u>	<u>743</u>
<u>5</u>	<u>847</u>
<u>6</u>	<u>952</u>
<u>7</u>	<u>1,045</u>
<u>8</u>	<u>1,139</u>
<u>9</u>	<u>1,230</u>
<u>10 or more</u>	<u>1,322</u>

\* \* \*

.41      Relocation Family  
Grant Rule

When the RFG is applicable, the county shall compare and base aid on the lesser of:

.411      CA Computed  
Grant Amount

The California computed actual grant amount for a full month, excluding overpayment adjustments, or

.412      Other States  
MAP

The MAP amount of the previous state or U.S. Territory of residence, plus California special needs when included in Section 89-402.411.

\*      \*      \*

(b)

The county shall semi-annually update the other state MAP amounts effective each April 1st and October 1st with figures provided by the State Department of Social Services which are based upon U.S. Department of Health and Human Services data.

\*      \*      \*

.43      Reduced Income  
Supplemental Payment  
(RISP), Homeless Assistance  
Payment for Permanent  
Housing and Overpayment  
Adjustment Computation

For the purpose of determining the RISP, homeless assistance payment for permanent housing, and computing overpayment adjustments, the MAP specified in Sections 44-402, 44-211.531 and 44-352.41 shall be the lesser of the California MAP or the MAP from the previous state of residence.

\*      \*      \*

.45      RFG Example

A mother and her three children arrive in California from Mississippi in April. Four months later (August), they apply for AFDC. The RFG rule will apply to the AU for eight months. (Twelve month residency requirement minus four months in California equals eight RFG months). Their RFG period will end March 31st of the following year.

\*      \*      \*



# DECLARATION OF DESHAWN GREEN

I, DESHAWN GREEN, declare that:

1. The matters in this declaration are within my personal knowledge and if called as a witness I could competently testify thereto.
2. I lived in Sacramento, California for twelve years with my mother. In 1985, I went to Louisiana with my mother. While I lived there, I had two children, who are now three and four years old. My son, who is four, has sickle cell anemia. The father of my children was arrested several times for beating me.
3. My mother returned to California in 1987 and is now living in Sacramento. Around December 1, 1992, I decided to escape from the physical abuse from my children's father with my two children. I talked to my mother and she offered to give me and my children shelter and protection. My reasons for coming to California had nothing to do with the AFDC grant level.
4. I arrived in Sacramento, California on the evening of Friday, December 4, 1992. At that time I realized that my mother was homeless. She is unable to help me financially or offer me a place to stay. I spent the little money I had on a hotel room for the weekend. On Monday, December 7, 1992, I was out of money and I had no choice but to apply for homeless assistance and AFDC.
5. I received homeless assistance December 7, 1992. By December 22, 1992, I will have to find permanent housing. I have been told by my worker that the county can only help me with permanent homeless assistance if the monthly rent is less than \$152, 80% of the AFDC grant

for three in Louisiana, and that my AFDC grant will be \$190 a month, the most I could receive in Louisiana.

6. I have been looking for apartments in the Sacramento area. One landlord asked for \$300 per month with a \$350 deposit for a one-bedroom unit, or \$465 per month with a \$300 deposit for a two-bedroom. Another apartment complex said I could move in for a \$499 deposit and a monthly rent of \$475. If I could get the California AFDC grant for three people of \$624, I could get up to \$499 permanent homeless assistance to pay the deposit and I could afford the rent.

7. AFDC is my only source of income. The \$190 a month I am getting will not even pay for rent, much less other necessities of life. I do not know anyone who can lend me money to pay for an apartment.

8. I do not have an [sic] alternatives but [sic] be on the streets with my two children. I do not even have a car to sleep in. The monthly AFDC I receive is not enough to buy me and my children tickets to go back to Louisiana. The tickets I used to get me to California cost \$260 and were a special price. We can't go back to Louisiana anyway, because we wouldn't be safe from the children's father. I don't know anywhere else to go because I've never lived anywhere besides Louisiana and California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 14, 1992, at Sacramento, California.

/s/ Deshawn Green  
DESHAWN GREEN

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# DECLARATION OF DEBBY VENTURELLA

I, Debby Venturella, declare that the following facts, as set forth in this declaration, are personally known to me; that if called as a witness I could and would competently testify under oath to the following:

1. I was born and raised in Hawaii where I completed high school and cosmetology college. My parents retired and came to California a year ago to take care of my grandfather when my grandmother died.
2. I worked as a cosmetologist in Hawaii until 1988 when I moved to Washington state for better job opportunities and a lower cost of living.
3. I was working as a cosmetologist in Washington state when I met my husband Anthony Venturella. He worked as a cook and then in maintenance at a camping resort area.
4. Anthony and I were married in 1990.
5. I became pregnant and had to stop working in September 1991.
6. Our daughter, Cheyenne, was born in October 1991.
7. In May 1992 I learned I was pregnant again.
8. In August 1992 I discovered that my husband had gotten a co-worker pregnant. This came as a complete shock to me. I told my husband I could not stay in that town and that I was going to leave the state.
9. My husband agreed that we could leave. We left Washington on October 16th and went to Oklahoma



because he had relatives there and knew of a trade school he wanted to attend.

10. When we got to Oklahoma my husband couldn't get the financing to enter the trade school, so he had to get a job.

11. First my husband got a job in a restaurant at a truck stop and then as a cook in a bar from 2 p.m. to 2 a.m.

12. Our relationship had been falling apart since Anthony's affair, and things went from bad to worse. He took his paychecks and spent them drinking and gambling. There was no money for rent or food and he would come home drunk and abusive.

13. I knew I couldn't stay with my husband any longer. I could not even trust Anthony to take care of Cheyenne while I went to the hospital to give birth to the new baby, much less to be the support I would need with a one year old and a newborn.

14. The only place I could go for the support I needed was California. The only relatives I have are here.

15. My mother was born and raised in California. I have no brothers or sisters or aunts and uncles.

16. After just six weeks in Oklahoma, I came to Belmont, California in early December 1992 with Cheyenne. We stayed temporarily with my parents and grandfather in my grandfather's two bedroom house. Since my parents have one bedroom and my grandfather the other, there wasn't enough room for my family to stay there.

17. My baby's due date is February 20, 1993. I will not be able to work until then and for a while afterward. I had a complicated delivery with my first baby, which left me unable to lift or drive for a month. I'm worried that my second baby will also involve complications.

18. Because I am going to deliver soon, and cannot work, I had no choice but to apply for AFDC. I was told I would get the Oklahoma grant level even though I only lived there for six weeks. I have never been on AFDC before.

19. I did not know what the AFDC grants were in California before I moved. They played no part in my decision to come here.

20. I am told that the Oklahoma grant level is \$264 per month for 2 people and \$341 for 3 people. In Oklahoma, you can find an apartment for \$199 a month, including utilities.

21. I have been looking for apartments here and can find nothing that I could afford on only \$341 per month.

22. My parents recently helped me rent a one bedroom apartment in Belmont because there was not enough room for me and my daughter to stay at my grandfather's house any longer. The rent is \$700 a month. Although my parents were able to loan me money to move in and pay for a part of my rent, they cannot afford to loan me the difference between the Oklahoma grant and \$700 for very long, much less a year.

23. I plan to work as soon as I am able to and can get child care, and I also hope to get child support, but



this is going to take a while. I need AFDC for the transition.

24. I don't know what I will do if I do not get the full California grant level of \$624 per month for 3 for the next year. I can sell my car and maybe borrow some from my parents' retirement, but after that I just don't know what we'll do if I can't get a job that pays enough to support my family while paying for childcare for a newborn and a one year old. I feel like I'm one step away from being homeless in the streets or in a shelter. I want to be self-supporting as soon as possible, but need the full California grant to help me through this period until I can get back on my feet.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my recollection.

Executed this 15 day of December 1992 at Redwood City, California.

/s/ Debby Venturella  
DEBBY VENTURELLA  
Declarant

### DECLARATION OF DIANA P. BERTOLLI

I, Diana P. Bertolli, declare that the following facts, as set forth in this declaration, are personally known to me; that if called as a witness I could and would competently testify under oath to the following:

1. I live with my 14 month old son, Derrick, in San Mateo, California.

2. I moved to California from Colorado to get away from my son's father, Derrick, Sr. He and I were not getting along, and I was afraid for my son's and my safety.

3. We are temporarily staying with my uncle, his wife and their 2 year old boy and 15 month old girl in a two bedroom rented house. There isn't room for us to stay on other than a temporary basis.

4. I want to attend an 18 week training program in the mornings through the Regional Occupational Program in Redwood City, California to become a hospital unit clerk, beginning in February 1993. I have some clerical skills and I think I could earn enough to support myself and my son once I finish the training program and learn the medical terminology.

5. I am also looking for part-time clerical work and subsidized child care but haven't been able to get either yet.

6. Since I can't stay at my uncle's house and don't have a job yet, I had to apply for AFDC for myself and my son.

7. I applied for AFDC in San Mateo County on December 1, 1992.

8. I was told that the most AFDC I could get would be \$280 per month for the next year because I moved from Colorado last month and this is the maximum grant for two people in Colorado.

9. When I finished high school I attended college in Colorado until the money to pay for it ran out.

10. After college, I worked at a restaurant for a year and a half and then at Kelly Temporary Services until I saved enough money to get my own apartment.

11. At about the same time that I got my own apartment, Derrick, Sr. and I got together. He was working in a carpentry shop and later as a driver for a furniture rental business.

12. After a year and a half we found out I was pregnant. Unfortunately, Derrick, Sr. lost his job at about the same time.

13. As a result we got evicted and became homeless. We each stayed in different places for short periods of time with friends and family until there was finally an opening in a homeless family shelter in September 1991.

14. Derrick, Jr. was born a month later and we got AFDC and moved into an apartment.

15. Derrick, Sr. started school for his GED but our AFDC was cut off in March 1992 until July 1992 because of a Colorado rule that we could not get AFDC for more than a few months at a time.

16. We were both under a lot of stress and our relationship deteriorated to the point where we could not get along.

17. Derrick, Sr. had been violent in the past, and he began acting in ways that looked to me like he could be headed there again. He wouldn't watch Derrick, Jr., and insisted I stay home with Derrick, Jr. all the time so that I could not go to school.

18. I got a job making calls from home for the Disabled American Veterans, but it only paid \$4.25 an hour.

19. It became clear to me that Derrick, Sr. and I could not stay together, yet his abusive behavior made it impossible for me to get more skills and a job so I could support myself and my son without him, to get out from under this situation.

20. Finally, one day I realized I just had to leave. If I stayed in Colorado, Derrick, Sr. would have harassed me wherever I went because he knew all the places I could stay.

21. I asked my father for advice. He agreed that it would be better for my son and me if we could get away from there. He arranged for me to come to California where his brother lived, to make things safe for me to get on with my life. The California AFDC grant level had nothing to do with why I came here.

22. My family and I do not think it is safe for me to go back to Colorado for at least a year.



23. I have been looking for an apartment to rent or share but can find nothing here for the Colorado grant amount.

24. I can't go back to Colorado or continue to stay with my uncle for the next year. If I don't get the full grant amount of \$504 for two in California, I will have to find a full time job which, combined with my school, would keep me away from my little boy all of his waking hours. Even then, I'm not sure this would work, because I don't think I could afford so much childcare on the wage I could get in the current job market. Unemployment is high and I have few skills and no training.

25. I am afraid that I will become homeless again. I don't see any way out of this situation. I can't live here on \$280 per month and I can't go back to Colorado for fear for my safety and that of my child. I worry about my son's health if we become homeless during the cold, wet weather.

I declare under penalty and perjury under the laws of the State of California that the foregoing is true and correct to the best of my recollection.

Executed this 14th day of December 1992 in San Mateo, California.

/s/ Diana P. Bertolli  
 DIANA P. BERTOLLI  
 Declarant

## DECLARATION OF ROBERT GREENSTEIN

I, Robert Greenstein, hereby declare as follows:

1. I am the Executive Director of the Center on Budget and Policy Priorities, a Washington-based non-partisan, non-profit research center focusing on the impact of federal and state policies on low and moderate income Americans.

2. I have been involved in research, policy analysis and policymaking on issues regarding low-income people and welfare programs for over 15 years. Between January 1979 and January 1981, I served as administrator of the federal Food and Nutrition Service (FNS). I was the chief executive officer at the United States Department of Agriculture in charge of managing all domestic food assistance programs, including the Food Stamp and School Lunch programs. Prior to that time, I worked as a special assistant to the Secretary of Agriculture from March 1977 to January 1979. In that capacity, I was the USDA representative on inter-agency and White House task forces on welfare reform.

3. The Center on Budget and Policy Priorities has published dozens of studies, issue papers, and analyses on welfare programs, poverty, hunger, homelessness, and other topics related to low-income people. On behalf of the Center, I have testified on numerous occasions before Congress and federal and state legislative bodies, agencies and commissions as an expert on poverty and welfare issues.

4. I am familiar with the changes recently enacted in California's AFDC program. Specifically, I am aware that



pursuant to state statute, there now exists a residency requirement for receipt of AFDC such that families who have lived in California for less than 12 months at the time they apply for AFDC are entitled to an AFDC grant no greater than the maximum AFDC benefit for their family size in their prior state of residence.

5. No state has ever implemented a scheme of AFDC benefit levels for new residents predicated upon a recipient's prior state of origin, although both California and Wisconsin recently received permission from the federal government to do so.

6. California's residency requirement is founded largely on the premise that some people move to California to take advantage of the state's welfare benefits. Yet the plan contains no mechanisms to distinguish between families that have come to California for higher benefits and those that move to California for other reasons. Thus, many families that move to California for reasons other than higher benefits will be punished by a policy directed at other families. Even native Californians who have lived out of state and later return are subject to the requirement.

7. The California Department of Social Services, in an April 1990 study, found that 6.6 percent of AFDC families lived in another state in the year before they began receiving AFDC in California. (California Department of Social Services, Aid to Families with Dependent Children Characteristics Survey, Study Month of April 1990, Table 19. The data also reveal that for 16.9 percent of the respondents, the Department was unable to determine whether the family had resided out of state.) No

research has been done by the DSS on the reasons these families moved to California. Indeed, data from the same DSS survey show that of those for whom duration of residency is known, fewer than half of the recently arrived AFDC families in California received AFDC in their previous state. It is likely, therefore, that a substantial number of all recently arrived [sic] families did not move to California intending to apply for AFDC benefits.

8. Although California's residency requirement affects all newcomers no matter what their reasons for coming, it is possible to design a residency requirement that does not punish all recent arrivals regardless of their reasons for moving. Under the Wisconsin plan, for example, most families that have lived in the state for less than six months would receive a payment based on the benefit levels in their previous state of residence. Yet families applying for assistance after living in Wisconsin for more than three months that can demonstrate they had 13 weeks of employment during their time of residence in Wisconsin are entitled to the benefit levels provided to long-term Wisconsin residents. This mechanism is one way to distinguish between recent arrivals who unexpectedly find themselves in need of public assistance due to unemployment following several months of work and those who move to the state expecting to receive public assistance. Such a plan is more sensible if the goal is to affect only those whose reason for moving is welfare. Of course, even with these refinements, the residency requirement may be legally or constitutionally invalid for other reasons.

9. California's residency requirement limits a newcomer's AFDC benefits to the maximum benefit available

in the newcomer's former state. Because states generally have different AFDC benefit levels (presently only two states have the same maximum benefit for a family of three), this requires California to administer a program with more than 45 different sets of benefit levels. As a former administrator of the U.S. Food and Nutrition Service, I believe such a scheme will be complicated to administer and thus will require considerable administrative effort.

10. Perhaps in an effort to minimize this administrative burden, California's plan will identify the benefit levels in each state twice annually and adjust California's table on April 1 and October 1. These levels are based only on standard AFDC benefits in each state and exclude payments made in other states to cover "special needs" of AFDC families. Special needs for which some states make payments include utility or clothing costs in the winter, high shelter costs, burial costs, and expenses due to natural disaster or eviction. Special needs payments can be made to a family on an ongoing basis.

11. These aspects of the residency requirement will leave recently arrived AFDC families in California at a disadvantage in three ways relative to AFDC families of similar status in their previous state of residence. First, the newly arrived families will not receive special needs payments for needs not covered in California, even if these families would have been eligible for the special needs payments in their previous state of residence. California's determination of their prior grant, therefore, may be lower than the grant was if the family received special needs not covered in California.

12. Second, the newly arrived residents will not benefit for a number of months from an AFDC grant increase in their previous state if the increase occurs between the two annual determinations by the California Department of Social Services. This would happen if, for example, AFDC benefits were raised in Ohio in May of 1993 while the California DSS had established its schedule of AFDC benefits in each state as of April 1993. Under this scenario, an AFDC family moving from Ohio to California after May and before the next California redetermination of grant levels in October would find its AFDC benefits lower than the benefits it had been receiving in Ohio. Indeed, according to the implementation instructions the state agency has released to the counties in All-County Letter 92-98, such new recipients must be paid the lower amount even if they provide proof that they received a higher amount in Ohio.

13. There is a third reason that some residents will receive smaller grants than they did in their former states. Although a number of states have benefit levels that vary by region, DSS has not selected the highest benefit level from each state as the benchmark. For example, the maximum benefit level in certain areas of Virginia including Charlottesville, Alexandria, Fairfax County, and Arlington County is \$354 per month, while DSS lists the maximum as \$291, the level in other parts of the state. Therefore, a family from Charlottesville, for example, would receive \$63 less than its actual Virginia grant, a drop of 18 percent.

14. While California's AFDC benefit levels rank among the highest in the nation, a simple comparison of



state benefit levels is incomplete and somewhat misleading because it does not take into account differences in costs of living across the states. The costs of living in California are among the highest in the nation. This can be demonstrated by examining differences in housing costs, typically the largest budget expense for AFDC families.

15. When AFDC benefits are compared with housing costs, California ranks near the middle of all states. The attached Table I compares the maximum AFDC benefit for a family of three as identified by California's DSS with the costs of modest housing in each of the 50 states and the District of Columbia.

16. The housing measure used is the weighted average Fair Market Rent for metropolitan areas in each state. Fair Market Rents are established by the U.S. Department of Housing and Urban Development for every metropolitan area and nonmetropolitan county in the U.S. They are the standard for several of HUD's low income housing programs and are intended to reflect the costs of obtaining "privately owned, decent, safe, and sanitary housing of a modest (non-luxury) nature with suitable amenities." Moreover, because Fair Market Rents are determined by the federal government for every jurisdiction in the nation, they are the best source with which to make state-by-state comparisons of the costs of decent but modest housing.

17. This state-by-state comparison of AFDC benefits relative to housing costs suggests that the value of California's current benefit levels is close to the middle when compared with other states, rather than near the top.

Because California's housing costs are higher than in any other state with the possible exception of Massachusetts, California ranks 17th in the nation in the adequacy of AFDC benefits relative to housing costs. Moreover, this rank *overstates* California's standing because it does not take into account the extent to which AFDC families in a given state receive housing assistance from the federal, state, or local government. According to the U.S. Department of Health and Human Services, only 12 percent of California's AFDC families received such subsidies in 1990, the lowest proportion of any state in the nation and only half the national average of 24 percent. That is, only about one in eight AFDC recipients in California receives any housing subsidy, compared to the national average of almost one in four.

18. Because California's housing costs are so high, the residency requirement will place recently arrived AFDC families on an inferior footing relative to AFDC recipients in the state from which the newcomers recently moved. In all but one of the 46 states (including the District of Columbia as a state) in which AFDC benefit levels are lower than in California, the average statewide costs of modest housing are also lower than in California. This means that newly entered residents from 45 of these 46 states typically will face higher costs of living without any increase in their AFDC benefits to help meet those costs.

19. The residency requirement will also leave recent residents of California on an inferior footing relative to long-term California residents, many of whom have difficulty affording decent housing despite receiving the state's regular AFDC benefits. The average metropolitan



Fair Market Rent for a two-bedroom apartment in California was \$750 a month in 1991. Thus, the recently enacted maximum AFDC benefit for a family of three, which is \$624 a month, equals just 83 percent of the costs of a modest two bedroom apartment. The maximum AFDC benefit for a three-person family even falls below the the average Fair Market Rent for a one-bedroom apartment, which was \$640 a month in 1991. New residents, with even lower grants than other Californians, will face even more severe difficulties affording housing. In fact, new residents from 16 states will find the benefit they receive for a family of three is less than *half* the Fair Market Rent for even a *one*-bedroom apartment in California.

20. Most AFDC families in California live in areas where the costs of even modest rental housing already exceed 80 percent of the maximum AFDC grant. For newcomers with sharply lower grants, the situation will become considerably more severe. The reduced grants can be expected to force some newcomer AFDC families to move into overcrowded or substandard quarters, or to [sic] even to become homeless, all of which can pose significant health and safety risks to residents, especially children.

21. In addition, newly arrived families in California from any of the 46 states with lower AFDC benefit levels than California will find their benefits cover less of the costs of necessities than the benefit levels received by long-term California residents, as measured by the state's "standard of need." The standard of need represents the income level the state considers essential to obtaining basic necessities, such as food, clothing, and shelter. As

part of the AFDC program, each state is required by the federal government to establish a standard of need. States are not required to set AFDC benefit levels at the need standard, although as of January 1992, AFDC benefit levels in 15 states equaled their respective states' need standards.

22. States have wide latitude in setting a need standard. Because of differences in methodologies, standards of need do not provide precise information on the differences in costs of living from state to state. Nevertheless, need standards still provide a useful measure of the costs of living from state to state, since they represent a state's judgment about the minimum income level a family with children needs to obtain basic necessities. California's need standard for a family of three is \$703 per month, while the maximum AFDC benefit for the same sized family is \$624 per month, or 89 percent of the need standard.

23. For families coming from any of the 46 states with lower benefits than California, AFDC benefits will cover from 17 percent to 83 percent of the California need standard, compared to the 89 percent of the need standard that is covered by maximum California benefits. Families from 22 states will receive AFDC benefits that fall below half of the need standard in California. Consequently, as a result of the residency requirement, many newly arrived AFDC families in California will face great difficulty obtaining basic necessities.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of December 1992 at Washington DC.

/s/ Robert Greenstein  
Robert Greenstein

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**California Department of Social Services  
News Release (excerpts)**

**STATE OF CALIFORNIA - HEALTH AND  
WELFARE AGENCY**

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**DEPARTMENT OF SOCIAL SERVICES  
\* \* \* NEWS RELEASE \* \* \***

(Seal)

PR 92:01

**STATE SOCIAL SERVICES DIRECTOR SAYS STATE  
WILL FIGHT WELFARE RIGHTS GROUPS' EFFORT  
TO DERAIL WELFARE REFORM**

**FOR IMMEDIATE RELEASE  
December 21, 1992**

**Contact: Amy Albright  
916/657-2268**

**SACRAMENTO** - California Department of Social Services Director Eloise Anderson said today the state will fight efforts by welfare rights organizations to derail a new welfare law that restricts newcomers to California to welfare grants no higher than those they would have received in their home state.

\* \* \*

The director's comments came in response to an announcement today by the ACLU, Legal Aid Society of San Mateo County, and the Coalition of California Welfare Rights Organizations that they are seeking a temporary restraining order in federal court on the state's further implementation of the Relocation Family Grant.

The relocation grant applies to welfare recipients who have resided in California fewer than 12 months and apply for public assistance after Dec. 1, 1992. It was

adopted by both houses of the Legislature as part of the 1992-93 budget agreement.

Anderson said that if the groups are successful in blocking the relocation grant, "it will plunge California deeper into debt, requiring more spending cuts as part of next year's budget agreement.

"The relocation grant is one part of a comprehensive effort to bring state spending on public assistance under control," Anderson said. "By limiting the grant level of newcomers and discouraging people from coming to California just for higher welfare benefits, the measure can save taxpayers millions."

The state estimates the relocation grant will save taxpayers \$21 million in the first year alone, including \$10 million from the state's general fund.

\* \* \*

**Temporary Restraining Order**  
[Filed December 22, 1992]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DESHAWN GREEN, DEBBY	)	
VENTURELLA, and DIANA P.	)	
BERTOLLT, on behalf of	)	
themselves and all others similarly	)	CIVIL NO.
situated,	)	CIV-S-92-2118
Plaintiffs,	)	DFL JFM
v.	)	CLASS ACTION
ELOISE ANDERSON, individually	)	TEMPORARY
and in her official capacity as	)	RESTRAINING
Director, California Department of	)	ORDER
Social Services; CALIFORNIA	)	
DEPARTMENT OF SOCIAL	)	
SERVICES; THOMAS HAYES,	)	
Director, California Department of	)	
Finance;	)	
Defendants.	)	

Upon reading the Complaint filed herein, as well as the supporting exhibits and memorandum of points and authorities, the Court finds that defendants' policy and practice of paying lesser AFDC grants to California residents who have not resided in California for twelve consecutive months prior to applying for aid than defendants pay to other California AFDC recipients will cause plaintiffs irreparable injury before this matter can be heard on noticed motion.



The Court further finds that plaintiffs have demonstrated that serious questions are raised on the merits in their claims and that the balance of hardships tips sharply in plaintiffs' favor with respect to defendants' policy of failing to pay full California AFDC grants to some California residents, based solely on the duration of their residency in California, which may violate the guarantee of equal protection, the right to travel, and the Privileges and Immunities clause of the United States Constitution.

It appearing to the satisfaction of the Court that this is a proper cause for granting a temporary restraining order, now, therefore,

IT IS HEREBY ORDERED THAT, pending the hearing on the order to show cause, defendants and their agents, assignees and successors in interest are enjoined from implementing: 1) Section 11450.03(a) of the California Welfare and Institutions Code; 2) regulations promulgated pursuant to section 11450.03(a) of the California Welfare and Institutions Code, including but not limited to M.P.P. E.A.S. § 89-402.4; and 3) All-County Letter ("ACL") 92-98 and All-County Information Notice ("ACIN") I-54-92 to the extent that the ACL or ACIN deny standard California AFDC benefits to members of the plaintiff class or determine an AFDC benefit in whole or in part by reference to the AFDC grant in any other state or territory.

IT IS FURTHER ORDERED that defendants will, prior to 5:00 p.m. on December 23, 1992, by facsimile transmission, electronic mail, telegram or night letter, notify the counties and county welfare directors of this

Order, and instruct them to stop the implementation of the policy enjoined herein.

IT IS FURTHER ORDERED that, within ten calendar days, defendants shall issue an All-County Letter to the same effect, and defendants shall provide plaintiffs' counsel with a copy thereof.

IT IS FURTHER ORDERED that plaintiffs will be permitted to proceed in this matter without posting bond or any other security.

IT IS SO ORDERED.

Dated: December 22, 1992

/s/ Milton L. Schwartz  
UNITED STATES DISTRICT  
JUDGE

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# DECLARATION OF MICHAEL B. KATZ

I, MICHAEL B. KATZ, declare as follows:

1. I am Stanley I. Sheerr Professor of [sic] Professor of History, Chair of the History Department, and Co-Director of the Urban Studies Program at the University of Pennsylvania. I had [sic] conducted research and written extensively about American social policies relating to poverty. My books relating to poverty are: *Poverty and Policy in American History* (1983), *In the Shadow of the Poorhouse* (1986), and *The Undeserving Poor* (1989), *The "Underclass" Debate; Views from History* (1993). Since 1987, I have served as archivist to an ex-officio member of the Social Science Research Council's Committee on the Urban Underclass. I am including a copy of my curriculum vitae.

2. I am familiar with the residency requirement law setting AFDC assistance levels at the level administrated by an applicant's prior state of origin for her first twelve months of residency within California. These laws are modern versions of the "settlement" provisions of poor laws ubiquitous in Elizabethan England and early America.

\* \* \*

3. Throughout American history, low paid work has been irregular and insecure. Workers have suffered frequent unemployment on account of seasonal economic conditions, recessions, business failure, and related causes for which they have not been responsible. As a result, to find work low income people have been forced to change their residence often, frequently crossing state

lines, which have been meaningless boundaries in a national economy.

4. The historic hardships occasioned by "settlement" laws will likely be repeated if the California statute is permitted to operate. In fact, because a higher proportion of those in poverty now are women heads of households and children, I believe the impact will be even more severe. Recent data, for example, show that almost 40 percent of the poor are children; nearly half of the children in female headed households are in poverty; and women head nearly half of poor households. The changing demographics of the poor means two things of relevance to the California statute. First, reduction in benefits for newly-arrived residents to California will harm those groups least able to cope with financial hardship. Child care services for low income mothers are inadequate; jobs are least available and poorest paying for low income, usually inadequately educated and trained single mothers; children suffer most from insufficient food, shelter, and clothing. Second, those compelled to leave their homes and travel to different states on account of domestic violence frequently are mothers with children. They do so often without any resources, prospect of spousal support, training or experience, and as the principal family breadwinner and caregiver.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 20th day of January, 1993, at Philadelphia, Pennsylvania.

/s/ Michael B. Katz  
Michael B. Katz



### DECLARATION OF CAROL A. WALLISCH

I, Carol A. Wallisch, declare that the following facts, as set forth in this declaration, are personally known to me; that, if called as a witness, I could and would competently testify under oath to the following:

1. Since November, 1987, I have been and am a Senior Consultant to the Assembly Human Services Committee. As part of my duties as consultant, I analyzed Assembly Bill (AB) 2584, Senate Bill (SB) 366, and the sections of SB 485 dealing with Aid to Families with Dependent Children (AFDC) for the State Assembly.
2. In December, 1991, Governor Wilson introduced a proposed Initiative, *The Government Accountability and Taxpayer Protection Act of 1992*, which eventually became Proposition 165. Proposition 165 failed passage on the November 1992 ballot. An element of that proposition was the California Relocation Grant.
3. Prior to action on the Initiative, AB 2584 (Quackenbush) was introduced in the Assembly on February 10, 1992. AB 2584, which contained the Relocation Grant proposal, was one of the bills meant to be the legislative implementation of sections of the Governor's Initiative and his budget. The wording of AB 2584 was virtually identical to the wording of the initiative with regard to the Relocation Grant. This bill was heard before the Assembly Human Services Committee where it failed passage.
4. The accepted purpose of the Relocation Grant was to deter families from coming to California to seek Aid to Families with Dependent Children (AFDC). The

*Background Information Request* form provided by the bill's author specified that the problem the bill addressed was that "California's high welfare grants are an incentive for families to move into the state. Of the 50,000 welfare recipients this bill would affect, 25% come from neighboring states and 36% come from states with the lowest paying grants."

5. The Legislative Analyst's Office commented on the proposal in the Office's *Analysis of the 1992-93 Budget Bill*: "Will This Proposal Reduce California's Attractiveness as a 'Welfare Magnet'? The proposal appears to be based, in part, on the belief that families come to California because of its high AFDC grant levels."

6. On March 2, 1992, the Assembly stripped SB 366 of its contents and author and placed the Relocation Grant language in the bill. The language in the bill is identical to the relevant section of the Initiative and was meant to implement the Governor's Initiative. The bill passed in the Assembly and was sent to the Senate on March 3, 1992. The Senate took no further action on this bill.

7. In August, 1992, SB 485 was stripped of its contents and its author, and SB 485 became a budget trailer bill. That is, budget negotiators in the Legislature placed new language regarding law changes needed to support the Budget Bill. The California Relocation Grant was added as part of the negotiated changes. Again the language that was adopted was virtually identical to the language of the Initiative, SB 366, and AB 2584. SB 485 passed both Assembly and Senate and was signed by the Governor to become Chapter 722 of the Statutes of 1992.



I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my recollection.

Executed this 19th day of January, 1993 at Sacramento, California.

/s/ Carol A. Wallisch  
CAROL A. WALLISCH  
 Declarant

Attachment to Declaration of Carol A. Wallisch  
 (excerpts)

**ASSEMBLY COMMITTEE ON HUMAN SERVICES**  
**TOM BATES, CHAIR**

**BACKGROUND INFORMATION REQUEST**

Measure: AB 2584

Author: Assemblyman Quackenbush

Origin of the bill:

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?

Governor's office

\* \* \*

What is the problem or deficiency in the present law which the bill seeks to remedy?

California's high welfare grants are an incentive for families to move into the state. Of the 50,000 welfare

recipients this bill would affect, 25% came from neighboring states and 36% came from states with the lowest paying grants

\* \* \*

RETURN THIS FORM TO: ASSEMBLY COMMITTEE  
 ON HUMAN SERVICES  
 Phone 445-0664

STAFF PERSON TO CONTACT: /s/ Carol Wallisch

\_\_\_\_\_

### DECLARATION OF DAVID PANUSH

1. I, DAVID PANUSH, hereby declare that the following is true and correct.

2. I am currently employed as the Assistant Fiscal Policy Advisor to the President Pro Tempore of the California State Senate, David Roberti. In this capacity I serve as a policy advisor on health and welfare-related budget issues. I have held this position since 1988.

3. On March 9, 1992, the State Assembly passed SB 366 by a vote of 57 to 17. This measure specified that families moving to California will receive AFDC grants for their first 12 months in California that are no larger than the grant they could have received in the state from which they moved. This bill was referred to the Senate Budget and Fiscal Review Committee and received no further action.

4. On May 20, 1992, the State Senate passed SB 1834 by a vote of 27 to 10. This measure included a provision that limited the maximum AFDC grant payable to families that have lived in California for less than 12 months to the average of the other 49 states. Exemptions were provided for families that moved to care for a seriously ill spouse, child[,] parent or sibling; families who moved as a result of a transfer of active military personnel; and families whose basis for deprivation arose after the family moved to California.

5. The August 12, 1992, version of SB 919 contained a provision that limited the maximum AFDC aid payment for families that have resided in California for less than 12 months to the amount which the family could have

received in the state of prior residence. This bill reflected statutory changes needed to reflect actions taken by the Budget Conference Committee, which had been meeting prior to August 12, 1992, and which adopted the Assembly version on this issue.

6. On August 28, 1992, the Senate passed AB3244 by a vote of 28 to 9. This measure included a provision relating to AFDC residency requirements which was identical to that provided in SB919.

7. On August 31, 1992, the Assembly passed SB 485 by a vote of 54 to 29. On September 2, 1992, the State Senate concurred in Assembly amendments by a vote of 29 to 9. The measure was sent to the Governor and signed into law on September 14, 1992. This measure contained a provision which was the same language relating to AFDC residency requirements as contained in AB3244 and the August 12 version of SB 919.

8. I declare under penalty of perjury that the foregoing is true and correct and could so testify if called as a witness.

9. Executed this 20th day of January, 1993, at Sacramento, California.

/s/ David Panush  
DAVID PANUSH



### DECLARATION OF CASEY S. McKEEVER

1. I, CASEY S. McKEEVER, declare as follows:

2. I am Directing Attorney of the Northern California office of Western Center on Law and Poverty in Sacramento, California. I have worked at Western Center for over nine years. In that capacity I represent low-income clients and respond to legislative requests related to state policy affecting the poor. I am registered as a lobbyist with the California Secretary of State. My area of specialty is public assistance, including Aid to Families with Dependent Children (AFDC). I have worked intensively on the state budget as it affects benefits for the poor.

3. During the 1992-93 budget year, I spent much time representing clients on cuts in AFDC proposed by the Governor. These included a provision which would limit the amount of AFDC a family could receive if it had resided in the state for fewer than 12 months. On behalf of our clients I opposed this provision.

4. Senate Bill 485 as enacted and signed by the Governor was the principal "budget trailer bill" related to health and welfare. This bill made necessary statutory changes which allowed budget reductions to be made in the amounts provided in the state budget, Chapter 587, Stats. 1992. The "trailer bill" is a device used for many years, but since *Harbor v. Deukmejian*, 43 Cal.3d 1078 (1987), has consisted of several different bills, each relating to a separate subject. The residency provision now contained in Welfare & Institutions Code §11450.03 was contained in SB485.

5. The process of adopting the state budget has become extraordinarily difficult over the past several years. Achieving the necessary two-thirds vote and obtaining a Governor's signature has required resort to procedural irregularities and suspension of the ordinary rules governing consideration of legislation. Negotiation among the key leaders – the Governor and leaders of both parties in each house – ultimately leads to resolution of the deep differences which divide policymakers.

6. The ordinary process of "how a bill becomes a law" is not followed in these circumstances. Instead, an agreement is placed in an existing "vehicle," a bill which was introduced for other purposes but which is in a convenient procedural position and is "hijacked" or "gutted" and used to contain the provisions agreed to.

7. This is what happened to SB485, and why there is little legislative history on the intent of the residency provision related to that specific bill. As shown in Attachment A (Senate Weekly History, February 6, 1992), SB485 was originally introduced as a tax bill by Senator Leroy Greene. On September 9, 1991, it was placed on the "Inactive File" on the Assembly floor. As shown by the Attachment B (Senate Weekly History, Oct. 9, 1992), it was not until August 10 of 1992 that it was removed from the Inactive File on the Assembly floor. It was there transformed into the major budget trailer bill for health and welfare, and as passed by the Assembly on August 31 and the Senate on September 2, did not even have a legislative author attached to it.



8. As such, there was no ordinary "legislative history" attached to SB485 which one would find in committee analyses, author's statements, etc. SB485 was an omnibus bill, and the floor analysis for the Assembly, attached here as Attachment C, only describe the provisions without extensive analysis of purpose or intent.

9. However, the issue of AFDC residency requirements had received much attention during the legislative session prior to adoption of SB485, and the development of the issue plainly influenced the final version of W.I.C. §11450.03 in SB485. In 1991, Assemblymember Charles Quackenbush amended AB671 to contain a six-month residency provision. See Attachment D, and Exhibit 9 from Plaintiff's Motion for Preliminary Injunction. The Governor included a 12-month provision in his welfare and budget initiative (which became Proposition 165), and the same provision was included in two packages of bills intended to adopt the terms of the initiative, AB2584 (Quackenbush) and SB1556 (Hill). See Attachment E. These bills were heard in policy committees, but failed to pass. See Attachment F.

10. Early in 1992 Lieutenant Governor Leo McCarthy announced his intention to sponsor legislation containing a residency provision which would limit those AFDC families residing in the state for fewer than 12 months to an amount based on the average grant of the other 49 states, instead of the amount which would have been received from the state of prior residence. See Attachment G. This proposal was then introduced as SB1907 (Johnston), and also later appeared in a larger omnibus welfare reform bill, SB1834 (Thompson). The former was never heard in committee, but the latter was

passed by the Senate on May 21, 1992. This bill later was transformed into an unrelated budget bill without the residency provision, and was ultimately signed by the Governor. See Attachment H.

11. SB366 had been a bill regarding consumer service information for health care service plans carried by former Senator Alan Robbins until it was "hijacked" on the Assembly floor, amended into a residency bill identical to that contained in Proposition 165, and passed on March 9, 1992. No author's name was attached. After passing the Assembly, it was never heard in any Senate committee. See Attachment I. After the Assembly passed SB366, however, AB2584 failed to pass the Assembly Human Services Committee on April 8 (see Attachment F).

12. By late spring, each house had passed a version of a residency provision: the Assembly through SB366, and the Senate in SB1834. Each house had also passed budgets assuming implementation of these provisions. See Attachment J. As noted in that document, the Assembly's SB366, reflected in its budget bill, AB2303, was described as the "Governor's proposal."

13. The two-house Joint Budget Conference Committee was charged with the responsibility of resolving differences between the houses and with the Governor. Ultimately the Conference Committee reported out a bill which adopted the Assembly version of the residency provision. As described in the Legislative Analyst's summary, the Conference Committee "[r]eject[ed] Governor's proposed changes to AFDC Program, *except for the residency proposal . . .*" See Attachment K. SB1280, however,

was not the budget bill ultimately enacted, since another "vehicle" was ultimately found (AB979) to incorporate the final version. The health and welfare trailer bill incorporating the budgetary elements of SB1280 was SB919, which contained the Assembly's residency provision. See Attachment L.

14. SB485 became the budget health and welfare trailer bill near the end of the legislative session after the Assembly defeated the Senate's version of the trailer bill, AB3244. The Assembly made one minor change unrelated to AFDC residency before importing the provisions of AB3244 into SB485. The Senate concurred in the Assembly amendments, and the bill was passed and sent to the Governor. Attachment B. The residency provision reflected the development of the issue which had occurred in legislation preceding it, and plainly was the Governor's version of that issue. There was no separate debate on the residency provision in SB485, and therefore no specific history of the intent behind that provision in SB485.

15. The documents attached hereto are true and correct copies of official documents I obtained from legislative committees, weekly histories or other legislative personnel.

I declare under penalty of perjury that the foregoing is true and correct and could so testify if called as a witness. Executed this 19th day of January, 1993, at Sacramento, California.

/s/ Casey S. McKeever  
CASEY S. MCKEEVER

**Attachments to Declaration of  
Casey S. McKeever (excerpts)**

[Attachment 1, pp. 5-6]

SB 366

**SENATE THIRD READING**

SB 366 ( ) - As Amended: March 2, 1992

SENATE VOTE: Not Relevant

ASSEMBLY ACTIONS:

COMMITTEE INS. VOTE COMMITTEE W. & M. VOTE  
(vote note relevant)

DIGEST

Urgency statute.  $\frac{2}{3}$  vote required.

Existing law provides for the same maximum aid payment (grant) for all recipients of Aid to Families with Dependent Children (AFDC) regardless of their length of time in California.

This bill:

- 1) Specifies that families moving to California will receive grants, for their first 12 months in California, no larger than the grant they could have received in the state from which they moved.
- 2) Becomes operative 30 days after the bill is signed by the Governor or when the federal government grants the state a waiver, whichever is later.

FISCAL EFFECT

According to the Legislative Analyst, the bill will generate General Fund savings of \$15 million in 1992-93 and \$2.1 million in the current year.



COMMENTS

- 1) Because federal regulation requires that all AFDC recipients be treated in the same manner, the state must seek a federal waiver to enact this bill. If it did not do so, it would endanger federal financial participation in the AFDC program.
- 2) In January, 1991, the grants for a single parent with 2 children ranged from \$120 per month in Mississippi to \$891 per month in Alaska.
- 3) Advocates for AFDC families have noted that residency requirements and penalties on persons moving from one state to another have been consistently found by the U.S. Supreme Court to violate the Equal Protection Clause of the Fourteenth Amendment and to penalize the constitutional right to travel. One-year residency requirements for welfare benefits were first struck down in 1969 and subsequent cases in 1982 and 1986 reaffirmed that original decision. FN 024087

Carol Wallisch  
445-0664:ahumans

SB 366  
Page 2

[ATTACHMENT J]  
Conference Overview  
1992-93 Budget Bill

Legislative Analyst's Office  
May 12, 1992

Welfare Reform Proposals  
1992-93  
General Fund

(dollars in thousands)

Proposal	Governor	SB 1280	AB 2303
AFDC Program			
	*	*	*
Residency requirement	-13,124	-13,124	-\$15,124
		Grants based on 49-state average	Governor's proposal
	*	*	*

Legislative Analyst's Office  
May 12, 1992



## [ATTACHMENT K]

The 1992-93 Budget Bill  
SB 1280 (Alquist)

Conference Version

Legislative Analyst's Office  
June 22, 1992

Major Actions, by Program Area	Fiscal Effect <sup>a</sup> (in millions)
Social Services	* * *

## Department of Social Services

- Rejects Governor's proposed changes to AFDC Program, except for the residency proposal (May Revision estimate). 423.6

\* \* \*

<sup>a</sup>General Fund relative to January budget estimates, unless otherwise indicated.

\* \* \*

## DECLARATION OF FRANCES FOX PIVEN

I, Frances Fox Piven, hereby declare as follows:

1. I am Distinguished Professor of Political Science and Sociology at the Graduate School and University Center of the City University of New York.

2. I have co-authored or authored numerous books and scores of articles on public policy, and particularly on welfare policy, beginning with *Regulating the Poor: The Functions of Public Welfare*, published by Pantheon Books in 1971.

3. I have conducted extensive research on the AFDC program over the past two decades and more, which is reflected in the aforesaid published work. I am now engaged in research on current developments in state and federal welfare policy.

4. I am familiar with recent changes in the California AFDC program, including the new residency requirement that limits benefits for applicants who have resided in California for less than 12 months to the maximum AFDC benefit level to which they would be entitled in the state in which they formerly resided.

5. While California's new residence requirement is unique in pegging AFDC benefit levels for newcomers to the benefit levels of the state from which they migrated, residence restrictions on the poor of one kind or another in fact have a very long history. American poor relief and AFDC residence laws have roots in ancient forms of English labor regulation known as laws of settlement, and in requirements of the English poor law which

restricted parish aid to those of the poor who had established residence. These laws were designed to restrict the mobility of the laboring poor, and also to keep the parish poor rates low. And while laws of settlement and poor relief residence requirements were often embodied in separate statutes, they were in practice intertwined in enforcing a labor system that bound the poor – which actually meant most people – to the parish.

6. The first law of settlement was passed in the 14th century, when feudal arrangements predominated, although they were beginning to weaken. The immediate precipitant appears to have been the Black Death of mid-century, which decimated the population. The resulting labor shortage was made more acute by the rise of the weaving trade which led to a growing demand for workers. At the same time, military developments created opportunities for escaped serfs to join armies raised for war. The Statute of Laborers was an attempt to cope with these labor problems, by making it illegal for those without property to refuse any offer of employment, or to demand more than the set wage, or to leave their town or village in search of better terms of labor. (See William J. Chambliss, "A Sociological Analysis of the Law of Vagrancy," *Social Problems* 12, no. 1, Summer, 1964, pp. 67-77.)

7. Settlement laws, backed up by laws against vagrancy (which in the 16th century was made a capital offense), persisted in England for several centuries. In the interim, England like other countries in northern Europe developed a poor relief system. And the restrictions on mobility embodied in the law of settlement were incorporated into poor relief.

8. The poor relief system developed in Lyons early in the 16th century illustrates these restrictions although, being a center of commerce, Lyons dealt perhaps more kindly than other places with outsiders. Indigent outsiders were given a night's lodgings before they were sent on their way, but sent on their way they were. (See Natalie Zemon Davis, "Poor Relief, Humanism and Heresy," paper presented at the Newberry Library Renaissance Conference in Chicago, April 16, 1966. See also Juan-Luis Vives, "Concerning the Relief of the Poor or Concerning Human Need: A Letter Addressed to the Senate of Bruges, January 6, 1526, translated by Margaret M. Sherwood. *Studies in Social Work*, No. 11, New York School of Philanthropy 1917.) Meanwhile, in Lyons and elsewhere in northern Europe, penalties for vagrancy and beggary were elaborated, in an effort to shore up restrictions on mobility contained in the new poor relief arrangements. (See de Karl de Schweinitz, *England's Road to Social Security: From the Statute of Laborers in 1349 to the Beveridge Report of 1943.*)

9. In 17th century England, restrictions on the mobility of the poor and on eligibility for poor relief were codified in the Act of Settlement and Removal of 1662. The main provisions of the law reiterated the constraints on mobility and forced employment of the Statute of Laborers. At the same time, the law specified that the indigent poor could only receive poor relief in their home parish, and indeed, that they be removed to their original parish if they required relief. Not surprisingly, Adam Smith later inveighed against these provisions, because it prevented people from searching for useful employment, and also prevented employers from finding workers. (See



Karl Polanyi, *The Great Transformation*, Boston, Beacon Press, 1944.)

10. The English Act of Settlement and the restrictions on movement which it imposed was partially repealed at the end of the 18th century. However, the parish residence requirements of the poor relief system were not repealed. Since the early 19th century was a period when changes in agriculture combined with changes in the emerging textile industry to produce large scale unemployment and insecurity, many people – in some counties as much as 15 percent of the population – depended on poor relief. (E.J. Hobsbawm and George Rude, *Captain Swing*, New York, Pantheon Books, 1968, p. 76.) Under these conditions, residence restrictions on the availability of poor relief discouraged people from moving away from rural areas, despite overpopulation and unemployment.

11. In effect, as Adam Smith had warned of the law of settlement, the requirement that the poor could only receive relief in their home parish almost surely impeded the emergence of national labor markets. This was particularly the case because the early factories developed in locations convenient to cheap sources of power, and not necessarily in relation to concentrations of the rural poor. As manufacturing grew in the first decades of the 19th century, the parish poor relief system came to be seen as a major inhibition on the development of a free market in labor. The Poor Law reform of 1834 wiped away these impediments in one brutal stroke, by eliminating outdoor relief, and thus eliminating the incentive to immobility that parish relief had constituted. (See Polanyi, *ibid*, part one; see also Sidney Webb and Beatrice Webb, *English*

*Poor Law History*, Part II, *The Last Hundred Years*, London, Longmans, Green and Co., 1929.

12. In other words, historical experience suggests that when residence conditions are attached to the receipt of relief, labor mobility is impeded, and so is economic growth. Sometimes local employers have sought exactly that result. This was surely the case for much of English history, when large landowners used relief in tandem with settlement laws to create a kind of parish serfdom, a captive labor supply. Residence restrictions in the United States on the receipt of AFDC and general relief may have had similar though less drastic effects in impeding the movement of surplus workers out of agriculture tin [sic] the post World War II period. In effect, state and county system welfare systems shored up by residence requirements reproduced the English parish relief system, making us something less than one nation, economically and politically. (See Frances Fox Piven and Richard A. Cloward, *Regulating the Poor*, New York, Pantheon Books, 1971, chapters 4 and 5.)

13. I have so far pointed out that the availability of relief only on condition of established residence restricts the mobility of people and labor. The reverse claim, that the availability of relief, or of improved relief payments, in new locales increases mobility is probably less true. The reason is quite simply that, the term "labor markets" notwithstanding, people generally do not behave like capital or commodities. They do not move easily, because they develop ties to a community, a place, to kin and neighborhoods, a kind of intertwined social and cultural investment which, for most people, is not forsaken easily. For this reason, large migrations are ore [sic] often forced



by desperation than by the promise of economic improvement. And for this reason also, when migration does occur in response to economic incentives, it is usually the young, and especially young males, who move because they are less likely to have formed the strong personal and cultural attachments which bind people to a place and community.

14. For this reason also, it is widely agreed by social policy experts that mobility in the pursuit of economic advancement has to be promoted, not discouraged. People do not move easily or quickly on a large scale, either in response to the promise of wage improvement or welfare grant levels increases. Almost all experts agree, for example, that the flight of new investment and employment to the suburbs and the sunbelt has created a major misallocation of persons and jobs, at least partially accounting for the concentration of urban poverty. Commission appointed by Presidents Carter and Reagan to address the problem of the mismatch of people and economic growth have seen the eventual solution in individual adaptation and mobility. California's new residence requirement, if it is upheld, will have the opposite effect, for it will constitute a reverse magnet, impeding the mobility and adaptation through which the American economy has grown in the past, and the American people have gradually improved their economic condition.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and

correct. This declaration was executed on January 21, 1993 at New York, New York.

/s/ Frances Fox Piven  
Frances Fox Piven

---

**Appendix A to Brief for Appellees In The  
Ninth Circuit (excerpts)**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DEANNA BENO, et al.,	)	No.
Plaintiff,	)	CIV-S92-2135 DFL JFM
	)	
v.	)	<u>POINTS AND</u>
	)	<u>AUTHORITIES IN</u>
DONNA SHALALA,	)	<u>OPPOSITION TO</u>
Secretary, United States	)	<u>PLAINTIFFS' MOTION</u>
Department of Health	)	<u>FOR PRELIMINARY</u>
and Human Services,	)	<u>INJUNCTION</u>
et al.,	)	
	)	Date: February 26, 1993
Defendants.	)	Time: 10:30 a.m.
_____	)	Courtroom: 3

\* \* \*

V

THE WAIVER GRANTED TO CALIFORNIA WAS AN  
APPROPRIATE EXERCISE OF THE SECRETARY'S DIS-  
CRETION

\* \* \*

California sought the waiver to allow different grant  
levels for newly arrived AFDC recipients on the basis  
that it would reduce the incentive for families to migrate

to California for the purpose of obtaining higher aid  
payments.

\* \* \*

Dated: 2/11/93

Respectfully submitted,

DANIEL E. LUNGREN, Attorney  
General of the State of California  
DENNIS ECKHART, Supervising  
Deputy Attorney General  
THEODORE GARELIS  
Deputy Attorney General

/s/ Theodore Garelis for  
EILEEN GRAY  
Deputy Attorney General

\_\_\_\_\_

NOV 16 1994

OFFICE OF THE CLERK

In The  
**Supreme Court of the United States**

October Term, 1994

ELOISE ANDERSON, INDIVIDUALLY AND IN  
HER OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
AND RUSSELL S. GOULD, DIRECTOR,  
CALIFORNIA DEPARTMENT OF FINANCE,

*Petitioners,*

vs.

DESHAWN GREEN, DEBBY VENTURELLA, AND  
DIANA P. BERTOLTI, ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit

**PETITIONERS' BRIEF ON THE MERITS**

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30 pp



**QUESTION PRESENTED**

May a state limit a new state resident's AFDC benefits to the level of benefits received or receivable in the person's state of prior residence for a period of a year, with full benefits to be provided thereafter?

## PARTIES

Petitioners, who were defendants below, are Eloise Anderson, Director of the California Department of Social Services, the California Department of Social Services, and Russell S. Gould, Director of the California Department of Finance. Mr. Gould was appointed as the Director of the Department of Finance on August 1, 1993, and as such, is the successor in interest to Thomas Hayes, who was named in the original pleadings filed in the District Court. Mr. Gould is automatically substituted as a party for Mr. Hayes pursuant to the provisions of Rule 25(d) of the Federal Rules of Civil Procedure.

Named respondents, plaintiffs below, are Deshawn Green, Debby Venturella, and Diana P. Bertolli. On January 29, 1993, the trial court ordered that plaintiffs shall provisionally maintain this matter as a class action on behalf of a class consisting of applicants and recipients of Aid to Families with Dependent Children ("AFDC") who have applied or will apply for benefits on or after December 1, 1992, and who have not resided in California for twelve consecutive months immediately preceding their application for aid.

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No. 94-197

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In The  
**Supreme Court of the United States**  
October Term, 1994

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ELOISE ANDERSON, INDIVIDUALLY AND IN  
HER OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
AND RUSSELL S. GOULD, DIRECTOR,  
CALIFORNIA DEPARTMENT OF FINANCE,

*Petitioners,*

vs.

DESHAWN GREEN, DEBBY VENTURELLA, AND  
DIANA P. BERTOLTI, ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

---

On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit

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PETITIONERS' BRIEF ON THE MERITS

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**OPINIONS BELOW**

The decision of the Court of Appeals, *Green v. Anderson*, is reported at 26 F.3d 95 (9th Cir. 1994) and is reprinted in the Appendix to the Petition for Writ of Certiorari ("Pet. App."), A1-2. The decision of the district

court is reported at 811 F.Supp. 516 (E.D. Cal. 1993), and is reprinted at Pet. App. A3-20.

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### JURISDICTION

On April 29, 1994, the United States Court of Appeals for the Ninth Circuit ("the Ninth Circuit") issued its opinion, affirming the preliminary injunction granted by the United States District Court for the Eastern District of California ("the District Court"). A timely petition for writ of certiorari was filed and docketed by this Court on July 28, 1994. This Court has jurisdiction to review, by way of writ of certiorari, the judgment or decree of the Court of Appeals. 28 U.S.C. § 1254(1).

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### RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Fourteenth Amendment:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Welfare and Institutions Code section 11450.03:

"(a) Notwithstanding the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450, families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with paragraph (1) of subdivision (a) of Section 11450, not to exceed the maximum aid payment that would have been received by that family from the state of prior residence.

"(b) This section shall not become operative until the date of approval by the United States Secretary of Health and Human Services necessary to implement the provisions of this section so as to ensure the continued compliance of the state plan for the following:

"(1) Title IV of the federal Social Security Act (Subchapter 4 (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code).

"(2) Title IX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code).

"(Added by Stats. 1992, c. 722 (S.B.485), § 37.5, eff. Sept. 15, 1992.)"

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### STATEMENT OF THE CASE

On December 1, 1992, the State of California began a five-year experimental project modifying welfare benefits

provided under the Aid to Families with Dependent Children ("AFDC") program. This project, known as the Assistance Payments Demonstration Project ("Demonstration Project"), has two primary elements. The first element is a work incentive program, coupling a decrease in benefit levels with an increase in the amount of income a recipient can earn from work without a corresponding reduction in benefits. Cal. Welf. & Inst. Code § 11450.01.<sup>1</sup>

The second element of the Demonstration Project, central to this action, is a one-year limitation on the amount of AFDC benefits an applicant who has not resided in California during the prior year can receive. New state residents receive the level of benefits they received or would have received in the state they lived in prior to moving to California. Cal. Welf. & Inst. Code § 11450.03 ("the Statute").

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<sup>1</sup> Implementation of this element required a waiver from the U.S. Secretary of Health and Human Services ("the Secretary") of certain federal AFDC rules. This element of the Demonstration Project is the subject of related litigation. In an effort to halt implementation of the project, California AFDC recipients filed suit in the United States District Court for the Eastern District of California ("District Court") against representatives of the United States and the State of California. The District Court denied the recipients' motion requesting a preliminary injunction. *Beno v. Shalala*, 835 F.Supp. 1193 (E.D. Cal. 1993). The District Court's order was appealed to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit vacated one of the waivers, reversed the District Court order, and remanded the matter to the District Court with instructions to remand the disputed waiver back to the Secretary for additional consideration of the waiver. *Beno v. Shalala*, 30 F.2d 1057 (9th Cir. 1994). Rhg. denied August 24, 1994.

The California Legislature enacted the Statute as a means to reduce welfare expenditures. Impetus for the Statute came from the existence of continuing, severe economic and fiscal problems in California (Declaration of Dennis Hordyk, "Hordyk Declaration," Pet.App. 21) and the California constitutional provision mandating a balanced budget.<sup>2</sup> Failure to implement the Statute was expected to result in additional unbudgeted state General Fund costs in the AFDC program of 8.4 million dollars in fiscal year 1992-93 and 22.5 million dollars in fiscal year 1993-94. (Hordyk Declaration, Pet.App. 22.)

The Legislature specified that the Statute would become effective upon necessary approval by the federal Secretary of Health and Human Services ("the Secretary"). Cal. Welf. & Inst. Code § 11450.03(b).<sup>3</sup> The Secretary gave approval on October 29, 1992, and the California Department of Social Services began applying the limitation shortly thereafter. (District Court Order, Pet.App. 4.)

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<sup>2</sup> "Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided." California Constitution, article IV, section 12(a).

<sup>3</sup> On July 13, 1994, the Ninth Circuit vacated the waivers necessary to implement the provisions of this section. *Beno v. Shalala*, 30 F.2d 1057 (No. 93-16411).



A complaint for declaratory and injunctive relief ("complaint") was filed on December 21, 1992. The complaint named the California Department of Social Services, and the directors of the California Departments of Social Services and Finance as defendants. Plaintiffs are a class of California residents who have applied or will apply for AFDC benefits on or after December 1, 1992 and who have not resided in California for twelve consecutive months immediately preceding their application for aid. Jurisdiction was conferred on the District Court by 28 U.S.C. § 1343(a)(3). This suit was brought pursuant to 28 U.S.C. § 1983. Plaintiffs' action alleged that the Statute violated various provisions of the United States Constitution, and infringed the constitutional right to travel.

The District Court issued a temporary restraining order on December 22, 1992, enjoining California from implementing the provisions of the Statute pending a hearing on plaintiffs' motion for a preliminary injunction.

At the hearing on plaintiffs' motion for a preliminary injunction, plaintiffs sought to block application of the AFDC grant limitation as provided for in the Statute. By declaration, plaintiffs averred that they suffered irreparable injury because, under the Statute, they would not receive the same AFDC grant that they would have received if they had already resided in California for the preceding twelve months. Plaintiffs averred they were fleeing abusive relationships rather than seeking higher welfare grants in migrating to California. (District Court Order, Pet.App. 5.)

California demonstrated the severe budget deficit facing the state – so severe that California would have no

reserve available to cover the costs of unforeseen events, such as natural disasters. (Hordyk Declaration, Pet.App. 21.) If California could not implement the Statute, it would have to spend 8.4 million dollars of state funds in fiscal year 1992-93, and 22.5 million dollars of state funds in fiscal year 1993-94. (Hordyk Declaration, Pet.App. 22.) Because of the severity of the state's budget deficit, there were no funds appropriated by the 1992-93 state budget to pay the additional costs that would result from an inability to implement the Statute. (Hordyk Declaration, Pet.App. 22.)

The hearing on plaintiffs' motion for a preliminary injunction was held on January 28, 1993. The District Court ruled from the bench, issuing the injunction. (District Court Order, Pet.App. 3.)

The District Court found that the Statute implicated the constitutional right to freedom of travel or migration, that a strict scrutiny analysis was therefore required to review the Statute, that California could not show a compelling reason for the Statute, and that plaintiffs had demonstrated they would suffer irreparable injury if the injunction were not granted. (District Court Order, Pet.App. 3.)

California filed an appeal from the District Court's order. On April 29, 1994, the Ninth Circuit summarily affirmed the District Court's order. (Ninth Circuit Order, Pet.App. 2.) On June 13, 1994, the Ninth Circuit corrected its previous order and ordered that its April 29, 1994, order be published. The correction was not substantive. (Ninth Circuit Order, Pet.App. 2.) This Court docketed

California's petition for writ of certiorari on July 28, 1994. The petition was granted on October 7, 1994.

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### SUMMARY OF THE ARGUMENT

California may limit AFDC benefits for recent state residents for one year to the level of benefits they received or would have received in the state from which they came. Because California's Statute does not determine eligibility for benefits, it does not penalize the right to travel. New California residents receive the constitutionally permissible amount of benefits they received or would have received in their state of prior residence. Respondents are thus in no worse position, as a result of the application of the Statute, than if they had not moved to California.

Furthermore, the Statute does not permanently classify new state residents as entitled to a lower amount of AFDC benefits. This case presents a different situation from previous cases in which this Court has struck down state laws that penalized the right to travel. The Statute's constitutionality should be analyzed by the traditional rational basis test.

Even if the Statute does penalize the right to travel, its impact on the exercise of that right is, at best, remote and incidental. Statutes that do not raise a significant barrier to interstate migration should be analyzed under the traditional rational basis test.

The Statute easily passes the rational basis test. The continuing and worsening budget problems in California provide a rational basis for a statute that lowers state

welfare expenditures. States must have the flexibility to properly allocate diminishing resources among all of their residents.

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### ARGUMENT

#### I

#### THE STATUTE DOES NOT OPERATE AS A PENALTY ON MIGRATION AND THEREFORE MUST BE UPHOLD IF IT HAS A REASONABLE BASIS.

Contrary to the reasoning of the District Court, as adopted by the Ninth Circuit, California's two-tier system of AFDC benefits does not penalize new California residents. The Statute should therefore be subjected to a rational basis analysis, not a strict scrutiny analysis.

The District Court relied upon *Shapiro v. Thompson*, 394 U.S. 618 (1969), and its progeny in determining that the Statute should be subjected to a strict scrutiny analysis. In *Shapiro*, this Court held that legislation which denied outright welfare assistance to new state residents of less than one year duration was constitutionally impermissible because, as such legislation "... touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest." *Shapiro*, 394 U.S. at 638; emphasis original.

Although at first glance *Shapiro* would seem to bar any restriction on the right to travel, such a reading of the case is unjustified. In a footnote, this Court further indicated:

"We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right to interstate travel."

(394 U.S. at 638, n 21; emphasis original.)

Thus, in *Shapiro*, this Court determined only that the complete denial of welfare assistance for a full year penalized the plaintiffs' right of interstate movement.

This Court reinforced its proscription against state legislation which penalized the right of travel in *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 258-259 (1974). There, the Court stated that *Shapiro* " . . . stand[s] for the proposition that a classification which 'operates to penalize those persons . . . who have exercised their constitutional right of interstate migration,' must be justified by a compelling state interest," 415 U.S. at 258, but repeated its prior statement in *Shapiro*, that "some 'waiting period[s] . . . may not be penalties,'" *Id.*, at 258-259.

In both *Shapiro* and *Memorial Hospital* the plaintiffs' right to travel was penalized because they were put in a worse position by application of the statutes at issue after they moved to their new states. In *Shapiro*, the plaintiffs had a right to receive welfare assistance in their state of prior residence. After moving, they were no longer eligible for welfare assistance for a full year. In *Memorial Hospital*, the plaintiffs had a right to state-funded non-emergency medical care before they moved. After they

moved to Arizona, they were not eligible for non-emergency medical care for a period of twelve months. Thus, in both cases, the plaintiffs irretrievably lost their eligibility to public assistance due solely to their moving to a new state. This Court determined that their right to travel had been penalized.

This Court may hold for petitioners in this case without disturbing the holdings of *Shapiro* and *Memorial Hospital*. Unlike the plaintiffs in *Shapiro* and *Memorial Hospital*, respondents here have not lost any eligibility to public assistance they enjoyed in their state of prior residence. In other words, California's Statute does not penalize the right to travel.<sup>4</sup>

Citing *Zobel v. Williams*, 457 U.S. 55 (1982), the District Court determined that the relevant comparison is not between newcomers to California and residents of

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<sup>4</sup> Respondents argue that without the guarantee of a certain benefit level, they cannot move to California. They are therefore requesting California to fund their move to California. No other newcomers to California have the ability to demand a certain payment level upon their decision to move to a new home - nor should they. As a general matter, a state is under no duty to subsidize the costs of the exercise of constitutional rights. In *Harris v. McRae*, 448 U.S. 297, 317-318 (1980), this Court held that a woman's freedom of choice does not carry with it a constitutional entitlement to the financial resources necessary to exercise that freedom. Here, California has not prohibited travel or placed a substantial obstacle in the way of a newcomer's move to California; it has simply limited welfare benefit levels for recent California residents to no more than they received or would have received in their state of prior residence. New residents are free to travel to California, and AFDC benefits remain available for recent California residents.



other states, but between newcomers and existing California residents. Pet.App. A14. However, existing residents are not even potentially impacted by California's Statute. If strict scrutiny is triggered by a penalty on the right to travel, then the existence of that penalty should be judged by its impact on persons who have traveled, or who may potentially travel, to California and not by a comparison involving existing California residents. Because only out-of-state residents may suffer detriment (be penalized) by operation of the Statute, the issue of penalty must be whether those out-of-state residents suffer a detriment due to a decision to travel to California. To determine whether this detriment exists, one must compare the position of newcomers before and after travel to California.

Here, respondents have no change in their position and have suffered no detriment, as to receipt of AFDC benefits upon moving to California. Respondents receive AFDC benefits in the same amount they received, or would have received, in their state of prior residence. As such, they have suffered no detriment, and have not been penalized by traveling to California.

In *Zobel v. Williams*, income from oil reserves was distributed by Alaska to its residents based upon length of state residency, thereby creating permanent classifications. Because no other state provided income from oil reserves to its residents, the District Court cited *Zobel* for the proposition that the proper comparison in analyzing whether a penalty on the right to travel exists is between newcomers to a state and existing residents. However, this Court in *Zobel* stated, 457 U.S. at 58, that the Alaska

statute is quite unlike the durational residency requirements examined in *Shapiro* and *Memorial Hospital*. Because this Court concluded in *Zobel* that the Alaska statute lacked a rational basis, this Court did not engage in an analysis of whether the Alaska statute triggered strict scrutiny due to its impact on travel. Therefore, this Court's decision in *Zobel* does not compel this Court to engage in the fiction of determining whether newcomers have been penalized by California's Statute by comparing newcomers with existing residents.<sup>5</sup>

Nor are respondents handicapped by the creation of permanent distinctions among residents and newcomers as were the plaintiffs in *Zobel*, *State Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986) and *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985). The statute at issue in *State Attorney General of New York v. Soto-Lopez* determined eligibility for veteran's preference for civil

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<sup>5</sup> The District Court also implied that because California's cost of living is generally higher than elsewhere, the benefits provided for by California's Statute operate as a penalty on new residents. This argument assumes, however, that the benefits received in the prior state of residence bear some rational relationship to the standard of need in that state. This assumption is in error as there is no requirement for benefit levels to be related to the standard of need. In fact, many states have constitutionally approved benefit levels much lower than the standard of need in that state. *King v. Smith*, 392 U.S. 309, 334 (1968); *Dandridge v. Williams*, 397 U.S. 471, 480, 483 (1970). The states have "undisputed power" under the Social Security Act "to set [both] the level of benefits and the standard of need" in the AFDC program. *King*, 392 U.S. at 334; *Jefferson v. Hackney*, 406 U.S. 535, 541, 545 (1972).

service employment based upon state residency at the time of induction into the armed forces. Similarly, the statute at issue in *Hooper v. Bernalillo County Assessor* determined eligibility for a property tax exemption based upon residency before a specific date. Persons subject to the Statute at issue here do not have their eligibility for AFDC benefits determined upon California residency.

Since the Statute does not determine eligibility based upon state residency, all persons subject to the provisions of the Statute are entitled to some level of benefits. Unlike plaintiffs in *Shapiro*, *Memorial Hospital*, *Hooper*, and *Soto-Lopez*, respondents here are not foreclosed from all AFDC benefits under the Statute.

Thus, because the Statute does not operate as a penalty on the right to travel of newcomers to California, petitioners need only demonstrate a rational basis for the Statute to survive a constitutional challenge.

## II

### **EVEN IF THE STATUTE OPERATES AS A PENALTY ON MIGRATION, THE IMPACT OF THAT PENALTY IS REMOTE AND INCIDENTAL, AND, THEREFORE, THE STATUTE SHOULD NOT BE SUBJECT TO STRICT SCRUTINY**

The dissent by Chief Justice Rehnquist in *Memorial Hospital*, 415 U.S. at 282-284, notes that in *Williams v. Fears*, 179 U.S. 270 (1900), the Court upheld a Georgia statute taxing persons hiring labor for work outside the State of Georgia because it affected freedom of egress "only incidentally and remotely." Because there was a reasonable basis for the Georgia tax statute, it did not

violate the Fourteenth Amendment to the United States Constitution. *Williams*, *supra*, 179 U.S. at 275.

Chief Justice Rehnquist's dissent in *Memorial Hospital* also notes that until this Court's decision in *Shapiro*, the leading case involving the right to travel, *Edwards v. California*, 314 U.S. 160 (1941), invalidated a statute that clearly was specifically designed to deter indigent persons from entering California by subjecting to criminal penalties "any person 'that brings or assists in bringing into the State any indigent person . . .'" *Memorial Hospital*, 415 U.S. at 249. The *Edwards* statute was not an incidental or remote barrier to migration as it provided for criminal penalties. It was instead an effective and purposeful attempt to insulate the state from indigents and a significant barrier to interstate travel. Thus, cases prior to *Shapiro* demonstrate that statutes whose impact on travel is incidental and remote should be judged by traditional, reasonable basis, equal protection tests. To be judged by stricter, heightened scrutiny, statutes should do more than just "touch on" the right to travel. Strict scrutiny should be reserved for statutes which impose a significant and severe penalty on travel. Were this not the case, the result in *Sosna v. Iowa*, 419 U.S. 393 (1975) would be inexplicable since this Court in *Sosna* permitted the State of Iowa to temporarily deprive newcomers of the right to file for divorce, notwithstanding the "touch" that state law had on interstate migration. This Court in *Sosna* made clear, therefore, that merely touching on the right to travel is insufficient to trigger strict scrutiny.

Therefore, the constitutionality of California's Statute should be judged by traditional, reasonable basis, equal protection tests. Indeed, a reasonable basis analysis is the



appropriate constitutional review for statutes involving the administration of public welfare assistance. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

In this case, the Statute's impact on travel is incidental and remote to its purpose of reducing state expenditures. As to the level of AFDC benefits, persons impacted by the Statute are placed in a position identical to that which they occupied before departing their state of former residence.<sup>6</sup> The Statute does not provide a penalty on the basic necessities of life, and it does not render new residents of California ineligible for public assistance, nor does it prevent anyone from traveling to California. Persons subject to the Statute receive the same amount of AFDC benefits which were constitutionally permissible in their state of prior residence. *Dandridge*, 397 U.S. at 480 and 483.

To the extent that the Statute has the effect of paying new residents less welfare than persons who have resided in California for more than twelve months, the Statute's impact is mitigated by the fact that, for every three dollars an AFDC grant is reduced by operation of the Statute, Food Stamps are increased by approximately one dollar. (See Declaration of Michael C. Genest ("Genest Declaration" Pet.App. 26-27).) In addition, all California

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<sup>6</sup> "In both 1980 and 1985 all but five of the states had a cost of living within ten percent of the national average . . . when all states are considered together, the variation in AFDC benefits is four times larger than the variation in the cost of living." Peterson, et al., *Welfare Magnets* (The Brookings Institute, 1990) p. 11. Thus, there is not a significant relationship between a state's cost of living and its welfare payments.

AFDC recipients (including new residents) may be entitled to a Special Needs Allowance, including an allowance for homeless assistance (Genest Declaration, Pet.App. 26) and persons subject to the Statute remain eligible for full Medicaid benefits. Although respondents have previously focused on the high cost of living in California, such considerations are irrelevant as there is no constitutionally required relationship between the standard of need and the level of AFDC payments.<sup>7</sup> Furthermore, the Statute is not a permanent part of California's AFDC program. It is one federally approved component of California's Assistance Payments Demonstration Project. The five-year demonstration project was approved only through September 30, 1997. (Record, District Court Clerk's Docket entry 69, Exhibit 2, page 1. Joint Appendix 56.) Thus, the impact of the Statute on the right to travel is significantly less than the impact of the statute at issue in *Shapiro*, which operated as a total denial of welfare assistance for a year. The impact of the Statute is also much less than the impact on the right to

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<sup>7</sup> Within the broad parameters of federal AFDC requirements, states have a great deal of discretion in determining the standard of need and the level of benefits. 42 U.S.C. §§ 601, et seq. *King v. Smith*, *supra*, 392 U.S. at 318. It is constitutionally permissible both to establish a benefit level below the standard of need and to set benefits which will encourage gainful employment. It is also constitutionally permissible to disregard family size in setting benefit levels. *Dandridge v. Williams*, 397 U.S. 471, 480, 483 (1970). 42 U.S.C. § 601 states that the purpose of the AFDC program is, in part, to " . . . furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State. . . ." Thus, to the extent that the Statute operates as a reduction of benefits, the Statute is constitutionally permissible.



travel of the statutes at issue in *Zobel v. Williams*, *State Attorney General of New York v. Soto-Lopez*, and *Hooper v. Bernalillo County Assessor*. In all of those cases, the statutes at issue created permanent classifications among residents and newcomers. A strict scrutiny analysis is inappropriate in this case; a reasonable basis analysis suffices. A reasonable basis analysis is the appropriate constitutional review for statutes involving the administration of public welfare assistance. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

### III

#### CALIFORNIA'S INTEREST IN REDUCING WELFARE COSTS IS SUFFICIENT TO JUSTIFY THE USE OF A TWO-TIER SYSTEM OF DISTRIBUTING AFDC BENEFITS.

Contrary to statements made by the District Court, and adopted by the Ninth Circuit, California's interest in reducing welfare costs is sufficient to justify statute's two-tier system of distributing AFDC benefits.

The District Court's finding is derived from the determination that the Statute must be subjected to strict scrutiny. However, as shown above, a strict scrutiny analysis is not proper because the Statute does not penalize the right to travel as it does not affect eligibility for AFDC. Here, the correct analysis is the reasonable basis or rationality test. The Statute passes that test. The continuing and worsening budget problems in California provide a rational basis for a statute that lowers state welfare expenditures. Furthermore, as part of a federally approved experiment in welfare reform, pursuant to 42

United States Code section 1315(a), it provides necessary information for future decision-making by state and federal policymakers.

When a state distributes benefits unequally, the distinctions it makes are subject to review under the Equal Protection Clause of the Fourteenth Amendment. The statutory scheme must pass the rationality test at a minimum. *Zobel v. Williams*, 457 U.S. 55, 60 (1982). Generally, a law will survive such scrutiny if the distinction rationally furthers a legitimate state purpose.

Durational residency requirements have been found constitutionally permissible if the justifications are sufficient. *Sosna v. Iowa*, 419 U.S. 393. In *Sosna*, the state's longstanding and virtually exclusive interest in regulating domestic relations justified the impact on travel of a statute that required that a petitioner in a divorce action be a resident of Iowa for one year preceding the filing of the petition. 419 U.S. at 406. California's interest in maintaining a balanced budget is at least as important as a state's interest in regulating domestic relations.

The plaintiff in *Sosna* was not irretrievably foreclosed from obtaining some part of what she sought. In the present case, respondents' eligibility for public assistance is not in question. A potential AFDC recipient coming to California still may apply for, and, if eligible, obtain assistance, but at a rate equal to what that potential recipient would have received in the state of prior residence. Here, as in *Sosna*, the justifications for the durational residency requirement are rational, and hence, legitimate. A grant level which is constitutionally permissible in one state should not become unconstitutional in

another state just because the grantee made a unilateral decision to change residence.

Here, the budget problems confronting California outweigh respondents' claims. The Statute is a legislative solution designed to confront problems not apparent in *Shapiro* and its progeny. The Statute uses a temporary classification which does not permanently deprive plaintiffs of any interest. Because the Statute imposes no penalty on the right to travel, the Statute is constitutionally permissible since it rests upon a rational basis.<sup>8</sup>

The Statute easily passes the rational basis test. The unstated but plain purpose of the Statute is to reduce California's welfare expenditures. California was forced to reduce expenditures in the AFDC program in fiscal years 1990-91, 1991-92, and 1992-93 because of severe gaps between projected revenues and expenditures. Welfare and Institutions Code sections 11450.01, 11450.02, and 11450.03 (the Statute) were all designed as components of a federally approved demonstration project to temporarily reduce aid grants in the AFDC program and to provide information with which to evaluate further work incentives. Legislative Counsel's Digest of Senate Bill 485, added by stats. 1992, c. 722, No. 10 West's Cal. Legis. Service, p. 2898;<sup>9</sup> Pet.App. 29. Reducing state

<sup>8</sup> To the extent that *Shapiro* and its progeny appear to hold that financial considerations can never justify durational residency requirements, those holdings should be re-examined.

<sup>9</sup> The need to reduce state expenditures required in fiscal year 1992-93 is evidenced by the fact that the Governor reduced the appropriation for the support of his office by 15 percent. His veto message stated, "I take this action because of the unprecedented fiscal constraints and limited resources in the General

expenditures, especially in the midst of a continuing and growing budget deficit, is certainly a legitimate state purpose, just as is studying the effect of welfare reform initiatives.

The Statute achieves its purpose of reducing state expenditures by temporarily limiting the level of AFDC grants to those who choose to move to California. As noted above, the Statute does not prevent people from moving to California; it removes California's relatively high AFDC benefit levels, for a period of one year, as one of the factors a person might consider when contemplating a move to California.

Scholars have observed that welfare-induced interstate migration has had significant effects on state AFDC policies. Peterson et al., *Welfare Magnets* (The Brookings Institution, 1990) p. 83. Two important studies have shown that the effect of welfare benefits on migration is strong and significant. *Id.*, at 58. Furthermore,

" . . . as people make major decisions about whether they should move or remain where they are, they take into account the level of welfare a state provides and the extent to which that level is increasing. The poor do this roughly to the same extent that they respond to differences in wage opportunities in other states." *Id.*, at 83.

"A state with high welfare benefits provides incentives both for the poor to remain in the

Fund." Budget Act of 1992, stats. 1992, c. 587, No. 9 West's Cal. Legis. Service, p. 1832, Pet.App. A31.

state and for the poor in other states to move there." *Id.*, at 20.

Whether or not the Statute constitutes wise policy is a decision which rests exclusively with the California Legislature.<sup>10</sup> The degree to which the Statute relieves the state's fiscal crisis is also of no constitutional significance. As noted above, the setting of AFDC benefit levels is a political decision by the Legislature. "... [T]he Constitution does not empower this Court to second guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge v. Williams*, 397 U.S. at 487.

Recognizing the political process involved in the state's determination of the level of benefits, the Third Circuit, in *Everett v. Schramm*, 772 F.2d 1114 (3d Cir. 1985), discussed the policy of political accountability in the failure of Delaware's standard of need to reflect inflation.

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<sup>10</sup> Because of the experimental nature of the Statute, the results of this experiment may provide state and federal policy-makers with valuable information to assist them in future decision-making. The Statute is a component of a federally-approved demonstration project pursuant to 42 U.S.C. 1315(a). A condition to federal approval was the performance of a careful, scientific evaluation of the impact the Statute may have on migration. To measure this possible impact, the evaluation of the Statute will include an analysis of: the number of AFDC families migrating to California before and after the Statute is implemented; whether those families came from states with lower or higher AFDC benefit levels; the percentage of total caseload that migrated to California; and the average number of months newcomers resided in California before they applied for aid. (Record, District Court Clerk's Docket entry 69: Exhibit 8, p. 14.)

"Under the statutory scheme, AFDC recipients and activists must avail themselves of the political process, not the judicial process . . . to effect the changes they seek." *Id.* at 1122.

As noted by this Court, "... intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court . . . ." *Dandridge*, 397 U.S. at 487. Like Delaware's decision to reduce benefit levels, California's reduction of AFDC benefits is a political decision subject to public scrutiny. Here the legitimate state purpose is to reduce expenditures so that scarce resources may be preserved for all, including recipients of public assistance.

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## CONCLUSION

This Court may uphold the constitutionality of the Statute without overruling *Shapiro* and *Memorial Hospital*. Respondents are not penalized by the Statute. If the Statute affects the decision to migrate, it does so in an incidental and remote way which does not rise to the level of impact that triggers strict scrutiny.

This Court should hold that where a classification imposes no penalty on travel, or at most, has an incidental and remote effect on the right to travel, that classification can stand if rationally based, and that conservation of the taxpayer's purse is a sufficiently rational basis to justify a limit on public assistance expenditures. States must have the flexibility to allocate diminishing financial resources among all of its residents, including recent ones.



This Court should reverse the judgment of the Ninth Circuit and remand this case with instructions that the preliminary injunction be dissolved and the complaint dismissed.

Dated: November 14, 1994

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No. 94-197

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In The  
**Supreme Court of the United States**  
October Term, 1994

ELOISE ANDERSON, individually and in her official capacity as Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; RUSSELL S. GOULD, Director, California Department of Finance,

*Petitioners,*

v.

DESHAWN GREEN, DEBBY VENTURELLA, and  
DIANA P. BERTOLTI, on behalf of themselves  
and all others similarly situated,

*Respondents.*

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Court Of Appeals For The Ninth Circuit

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59 pp

**QUESTION PRESENTED**

Whether a State's denial to newer bona fide residents of AFDC benefits equal to those granted to longer-term residents is unconstitutional.



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No. 94-197

In The

## Supreme Court of the United States

October Term, 1994

ELOISE ANDERSON, individually and in her official capacity as Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; RUSSELL S. GOULD, Director, California Department of Finance,

v. Petitioners,

DESHAWN GREEN, DEBBY VENTURELLA, and  
DIANA P. BERTOLTT, on behalf of themselves  
and all others similarly situated,

Respondents.

On Writ Of Certiorari To The United States  
Court Of Appeals For The Ninth Circuit

## BRIEF FOR RESPONDENTS

## STATEMENT OF THE CASE

The California statute at issue facially discriminates against new residents by restricting their maximum Aid to Families With Dependent Children ("AFDC") benefits to the level of their prior state of residence. Thus, those who have lived in California for at least one year receive AFDC benefits at a level the State deems appropriate to their subsistence requirements. But those who have lived in California less than one year, even though they are bona fide California residents, are limited to the lesser

AFDC levels they would have received in Louisiana, Oklahoma, or whatever other state they moved from. Thus, for example, a family of four could have received up to \$743 per month when this case was filed if it had lived in California for more than a year, but an otherwise identical family of four would have received only up to \$144 per month if it had moved to California within the previous year from Mississippi. This is so regardless of whether or not a family can survive at those levels in California, which has virtually the highest cost of living in the United States.

The district court below held that this discriminatory law was an impermissible burden on the fundamental constitutional right to freedom of travel and migration, or alternatively an irrational discrimination between two similarly situated classes of state residents in violation of the Equal Protection Clause. *Green v. Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993). The Ninth Circuit affirmed summarily. *Green v. Anderson*, 26 F.3d 95, 96 (9th Cir. 1994) ("we AFFIRM [the preliminary injunction] for the reasons stated in the district court's order.").

#### A. The AFDC Program.

The AFDC program is a need-based program designed to provide basic financial assistance to children whose families' incomes are less than a minimum subsistence level set by the State. 42 U.S.C. §§ 602(a), 606(a), 607(a) (1994); 45 C.F.R. § 233.20(a)(3)(ii) (1993). The AFDC program is designed to encourage "the care of dependent children in their own homes or in the homes of relatives" in order "to help maintain and strengthen family life." 42 U.S.C. § 601.

Established by Title IV of the Social Security Act, AFDC "is based on a scheme of cooperative federalism." *King v. Smith*, 392 U.S. 309, 316 (1968). All states have chosen to participate. Participating states are reimbursed with federal monies for a percentage of the funds

expended for benefit payments or program administration. *Heckler v. Turner*, 470 U.S. 184, 189 (1985). In return for the federal funds, states must provide aid and services in accordance with federal law. See, e.g., *King v. Smith*, 392 U.S. at 316-17. Petitioner California Department of Social Services administers the AFDC program in California. Cal. Welf. & Inst. Code § 10600 (West 1991).

#### B. The California Statute.

Section 11450.03(a) of the California Welfare and Institutions Code, the statute at issue in this case, provides that:

Notwithstanding the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450, families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with paragraph (1) of subdivision (a) of Section 11450, not to exceed the maximum aid payment that would have been received by that family from the state of prior residence.

(West Supp. 1994). The "maximum aid payment" ("MAP") is the most a family with no income may receive. In California, even the maximum AFDC payments provided to long-term residents are insufficient to meet what the state Legislature has determined is the minimum basic standard of adequate care in California. Cal. Welf. & Inst. Code §§ 11450, 11452, 11453 (West Supp. 1994); JA 89-90, ¶¶ 21-22. In forty-six other states, the MAP was even lower, and in seventeen states and territories more than fifty percent lower. JA 54-55, 88. Under the California statute, however, an otherwise eligible family that has not yet lived in California for a year is limited to the AFDC grant it would have received in the state from which it just migrated, regardless of how much lower



both the cost of living and the AFDC grant levels were in the former state.<sup>1</sup>

### 1. The Purpose of the Statute.

The statute was pointedly intended to discourage poor families in need of welfare benefits from moving to California. As the district court noted, "unless the purpose here is to deter migration, there is no other rational basis for the distinction drawn among applicants all of whom are California residents." 811 F. Supp. at 523. The district court found that "such a purpose is inherent in a two-tier benefit structure" that "affects only the benefits of new residents" rather than "cutting all recipients' benefits equally." *Id.* at 522 n.14. As the district court found further, the legislative history of the statute fully confirms these necessary inferences from the statute's plain text. *Id.* ("There is evidence in the record to support the conclusion that the purpose of § 11450.03 was to deter migration of indigents."). The State's representations during the initial stages of this litigation likewise reinforce that history.

#### a. The Governor's Proposal.

The statute had its origins in a ballot initiative introduced by Governor Pete Wilson on December 10, 1991. See Vlae Kerschner, *Big Drive to Cut Welfare: Wilson Plans Initiative for 1992 Ballot*, S. F. Chron., Dec. 10, 1991, at A-1, col. 1; accord JA 99. The Governor campaigned publicly

<sup>1</sup> Contrary to the State's implication (Pet. Br. at 16 n.6), there is a relationship between these levels and a state's cost of living. As uncontroverted expert testimony below explained, need standards "provide a useful measure of the costs of living from state to state, since they represent a state's judgment about the minimum income level a family with children needs to obtain basic necessities." JA 90. While benefit levels may be below the need standard, they must bear some rational relationship to it. 45 C.F.R. §§ 233.20(a)(2)(ii), (a)(3)(vii) (1993).

for the ballot initiative as a measure to keep poor people in need of welfare from coming to California. See, e.g., JA 20, 24, 61. Literature encouraging voters to place the proposed initiative on the November 3, 1992 ballot described its objective as to "STOP out of state welfare recipients from moving to California just to increase their grants." JA 20 (emphasis in original).

Campaign materials favoring the measure proclaimed the same purpose. For example, a widely distributed "fact sheet" stated that the proposition "**LIMITS WELFARE PAYMENTS TO NEWCOMERS** - To reduce any incentive to come to California solely for higher welfare benefits." JA 24 (emphasis in original). In the official ballot argument on behalf of the initiative, Governor Wilson declared that "people move to California to collect welfare," and that "[n]ew state residents would receive no more in welfare here than in their home state, to end California's status as a welfare magnet." JA 61; see also Reynolds Holding, *Wilson's 25% Cut: Legal Attack Planned on Welfare Crackdown*, S.F. Chron., Jan. 24, 1992, at A-12, col. 2 (quoting Kassy Perry, Associate Secretary for Public Affairs at the state Health and Welfare Agency, as stating "we are providing a disincentive for people to come to California just to take advantage of welfare").

While arguing for the measure as a ballot initiative, Governor Wilson also presented it in virtually identical terms to the State Legislature as part of his budget package. JA 20, 25. The Governor's legislative proposal was introduced and carried for him by Assembly members from his political party. JA 26, 28. It was meant to implement the same proposal contained in his ballot initiative. JA 25-28, 36, 38, 40, 45, 53, 58, 63, 99, 100, 107-109.<sup>2</sup>

<sup>2</sup> Because the two measures were treated as interchangeable by both the State and the federal government, all agency documents provided that the initiative would supersede the legislation should the initiative be approved. JA 45, 53, 58, 63.



### b. The Legislative Debate.

The legislative history of the predecessor bill to the statute also demonstrates that the animating purpose behind the residency requirement was to inhibit free interstate migration.<sup>3</sup> The district court summarized that record as follows:

. . . on March 9, 1992, the California State Assembly adopted Senate Bill ("SB") 366, a legislative proposal which contained language nearly identical to that contained in § 11450.03 (the sole substantive difference was the use of "could" in SB 366 instead of "would"). Assembly member Costa was the principal Assembly author of that measure. During the debate on the Assembly floor, Mr. Costa stated:

Realizing that in fact funds are short in California today, it makes a great deal of sense then to insure that incentives are provided for people from other parts of the country . . . that might be lured to California . . . for that purpose - to benefit from higher assistance. This legislation attempts to take care of that by requiring a one year residency requirement in California. . . .

Pls.' Ex. 11, 15:17-26. The provisions of SB 366 were reflected in the Assembly's Budget Bill, Assembly Bill ("AB") 2303, and eventually enacted by the Legislature in SB 485. McKeever Decl., ¶ 12.

*Green*, 811 F. Supp. at 522 n.14; see generally JA 99-113 (tracing legislative history of predecessor bill).

<sup>3</sup> As the district court noted, "[t]he legislative history of predecessor bills is relevant to discerning the legislative intent of a later enactment." *Green*, 811 F. Supp. at 822 n.14, citing *Estate of Cowart v. Nicklos Drilling Co.*, 112 S. Ct. 2589, 2595 (1992).

Both opponents and proponents of the measure sounded the same theme throughout the legislative debate:

This bill sends a message that says if you're poor, [you're] down trodden, California doesn't want you. We don't want you to come here, we want you to go someplace else, the land of opportunity is not a land of opportunity for people who are poor.

JA 32 (remarks of Assemblyman Bates).

It's certainly debatable whether the westward migration is in fact fueled by California as a welfare magnet. I doubt that's the case but nonetheless the passage of this Bill would certainly lay to rest that question and I would urge an aye vote on the Bill before us today.

JA 39 (remarks of Assemblyman Gotch).

I rise to support this measure . . . [I]t is a legitimate response to the concern . . . that California has become a welfare magnet and that people have come to this state because they see it as an opportunity to max out their welfare level of subsistence for themselves and those they support. . . . So this is a measure that makes sense. It is part of a proposal that the Governor is putting on the ballot.

JA 39-40 (remarks of Assemblyman Wyman).

The proposed measure passed and was incorporated into the final budget health and welfare trailer bill, SB 485, which was adopted by the state Legislature on September 2, 1992. JA 104, 109. Governor Wilson signed the legislation into law on September 14, 1992. JA 104.

### c. The Federal Waiver Application.

Shortly after enactment, the State reiterated its purpose to discourage migration to California by indigents in

its application for the federal waivers necessary to implement the law.<sup>4</sup> Three days after the Governor signed the measure into law, then Secretary for the California Health and Welfare Agency, Russell S. Gould, lodged the State's waiver request with the Secretary of HHS. CR 69, Ex. 12 at 1, 4.<sup>5</sup> As he had in his earlier letter requesting a waiver from the federal government for the ballot initiative, he defined the intent of the residency requirement in language nearly identical to that found in the Governor's campaign materials. CR 69, Ex. 8; JA 44-51. The waiver requests underscored once more the objective of "reduc[ing] the incentive for families to migrate to California for the purpose of obtaining higher aid payments." JA 44-45.

The State indentified no other objective in its forty-six page waiver request. CR 69, Ex. 12. Instead, the document repeatedly emphasized that discouraging migration into California was the plan's sole purpose. *See, e.g., id.* at 47, 48 ("The purpose of this proposal is to reduce the incentive for families to move to California to receive public assistance."), 50 (same, appearing here under heading "OBJECTIVE").

Similarly, in a separate case involving a procedural challenge to the waiver, *Beno v. Shalala*, 30 F.3d 1057 (9th Cir. 1994), the State represented that "California sought

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<sup>4</sup> Without federal government approval, the statute would have violated federal law requiring certain minimum grant levels and prohibiting unequal treatment by virtue of residency. The Secretary of Health and Human Services ("HHS"), however, is authorized to waive the federal requirements in the case of experimental projects. 42 U.S.C. § 1315(a) (1994). Accordingly, Section 11450.03(b) provided that the residency restrictions would become operative only upon approval by the Secretary of HHS.

<sup>5</sup> Citations to "CR" are to the District Court Clerk's Record, portions of which were reproduced in Appellees' Supplemental Excerpts of Record, Volumes I (CR 69) and II (CR 10, 35, 37), filed in the Ninth Circuit on June 18, 1993.

the waiver to allow different grant levels for newly arrived AFDC recipients on the basis that it would reduce the incentive for families to migrate to California for the purpose of obtaining higher payments." JA 121-122. In *Beno*, the same Ninth Circuit panel that affirmed the district court's findings here stated that the residency provision "aim[ed] to discourage poor families from moving to California by limiting recent entrants' AFDC benefits to the amount received in their state of former residence". *Beno*, 30 F.3d at 1061. Once more, no other purpose for the law was identified. In its most recent, post-*Beno* waiver request – dated August 1994 and still pending before the Secretary of HHS – the State once again described the statute's goal as "to reduce the incentive for families to move to California to receive public assistance." *See* August 1994 California Waiver Request, at p. 27; *accord, id.* at pp. 37-38.<sup>6</sup>

#### **d. The State's Representations in this Litigation.**

During the initial stages of the proceedings below, the State repeatedly reiterated the statute's exclusionary purpose. For example, on the day this action was filed, Petitioner Anderson, Director of the California Department of Social Services, issued a news release admitting that the measure aimed to "discourag[e] people from coming to California just for higher welfare benefits." JA 93. Furthermore, in the State's brief opposing the temporary restraining order, it listed "among the bases for implementation of the statute: 'to prevent California from being a magnet for people seeking to increase the level of their public assistance benefits by moving to California.' Def. Opp'n to TRO, December 21, 1992, 3:16-19." *Green*, 811 F. Supp. at 522 n.14.

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<sup>6</sup> Twelve copies of the post-*Beno* August 1994 California waiver request were lodged with the Clerk's Office on December 13, 1994.



## 2. The Effect of the Statute.

Just as the record below demonstrates only one statutory purpose, it similarly demonstrates that the statute has certain predictable effects. As intended, it discourages families from migrating to the state, or penalizes them once they get there, by depriving them of the same level of public support for the basic necessities of life that California affords to its longer-term residents. It does so even if they do not need AFDC upon arrival, but should come to need such support at any time during their first year of residence.

As the district court found, the statute thus "materially diminishe[d]" Plaintiffs' subsistence level benefits. *Green*, 811 F. Supp. at 521. Moreover, as the trial court further found, "the measure cannot fairly be said to provide the same payment as new residents could have received in the state of their prior residence since the cost of living, particularly housing, varies so substantially from state to state and generally is much higher in California than elsewhere." *Id.* In particular, the trial court found that "[a]ll of plaintiffs have been unable to locate housing in California that is affordable to them on the reduced AFDC payment" afforded them by the statute. *Id.* at 523.<sup>7</sup> The record amply supports the trial court's

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<sup>7</sup> The State contends that because Plaintiffs might receive some other benefits, depriving them of standard AFDC benefits should be discounted. *E.g.* Pet. Br. at 16-17. This argument is meritless. First, the only other cash benefit the State cites, namely homeless assistance, is dependent on the amount of the recipients' AFDC benefits. JA 66, 70, 71-72; Cal. Welf. & Inst. Code § 11450(f)(2)(B) (West Supp. 1994). Families like Plaintiffs' who cannot locate housing in California that is affordable to them on their former state grant levels are unable to utilize homeless assistance for more than two weeks. *Id.* Second, neither Food Stamps nor Medicaid benefits can be used to pay for housing. Third, as eligibility requirements for Food Stamps and AFDC differ, not all newcomer families who are eligible for

factual findings, which the State has not contested either before the Ninth Circuit or before this Court.

### a. DeShawn Green.

For example, Plaintiff Green was about to be homeless the day the temporary restraining order was issued in this case. JA 71-72, 96. Although she could find housing for her family of three in California on the California grant level of \$624 a month, she could not find housing in California on the Louisiana assistance level of \$190 a month she would have received under the statute. JA 72.

Ms. Green had originally lived in California for twelve years before moving to Louisiana with her mother in 1985. JA 71. While in Louisiana, she had two children who were three and four years old at the time this case was filed. *Id.* Her son has sickle cell anemia. *Id.* The children's father severely abused Ms. Green and was arrested several times for beating her. *Id.*

Ms. Green escaped with her children to California where her mother now lived. *Id.* When Ms. Green arrived, however, she discovered that her mother was homeless and could not offer her the shelter and protection she had expected. *Id.* Ms. Green had to spend the little money she had on a hotel room. *Id.* Three days later she was out of money and had no choice but to apply for homeless assistance and AFDC. *Id.*

The homeless assistance enabled Ms. Green to stay in a motel for two weeks. *Id.* To receive further homeless assistance, Ms. Green had to find an apartment she could rent for no more than 80% of her monthly AFDC grant. JA 71-72. Ms. Green searched for an apartment. JA 72. However, while she found a number of options at 80% or less of the California grant level of \$624 a month, she

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AFDC will be eligible for Food Stamps. Finally, none of the benefits cited by the State can be used to pay for such necessities as utilities, clothing, laundry, diapers, transportation, and the like.



could find nothing even close to the Louisiana level of \$190 per month, much less 80% of that. *Id.*

As a result, but for the issuance of the TRO in this case, Ms. Green and her children would have been on the streets without even a car to sleep in. *Id.* Ms. Green knew no one who could lend her money for an apartment. *Id.* She had never lived anywhere besides California and Louisiana. *Id.* She was afraid to go back to Louisiana for fear of her children's father, and could not have afforded transportation back even had she wanted to return. *Id.*

#### b. Debby Venturella.

Plaintiff Venturella would have been in Ms. Green's situation absent the preliminary injunction. Although the Oklahoma monthly assistance level of \$264 for two or \$341 for three would have enabled her to secure housing in Oklahoma, she could not find housing in California for those amounts. JA 76.

Like Ms. Green, Ms. Venturella came to California to escape domestic abuse. JA 75. When she left Oklahoma, she was pregnant with her second child. JA 74, 75. Her only relatives lived in California, including her mother, who was born and raised in California. JA 75. Although Ms. Venturella and her child were able to stay with relatives temporarily, they did not have room for her to stay longer and could not afford to help her to live elsewhere. JA 75-76. Ms. Venturella was seven months pregnant, and her previous pregnancy had involved complications which prevented her from working. JA 76. As a result, Ms. Venturella had no choice but to apply for AFDC assistance. *Id.*

Since she had never received AFDC before, Ms. Venturella had no idea what either the Oklahoma or California grant levels were. *Id.* She learned that she was to receive the Oklahoma grant level of \$264 per month for two, and then \$341 per month once her baby was born. *Id.* Although she could have found an apartment in Oklahoma for \$199 per month, she could find nothing in

California that she could afford on the Oklahoma grant level. *Id.* But for issuance of the preliminary injunction in this case, she would have lost the apartment her relatives helped her obtain but could not afford to help her maintain. JA 76-77.

#### c. Diana Bertolli.

Plaintiff Bertolli faced a similar predicament. She had come from Colorado with her infant son because she feared for her and her son's safety at the hands of his abusive father. JA 78. She and her family believed that she would not be safe from her son's father in Colorado for at least a year. JA 80. She came to California because she had an uncle in California with whose family she could stay temporarily. *Id.*

Since there was not enough room for her to stay with her uncle's family permanently, she had to apply for AFDC for herself and her son. JA 78. She had no job skills as her son's father's abusive behavior had prevented her from obtaining training or experience. JA 80. Welfare officials informed her she would receive the Colorado grant of \$280 per month instead of the California grant of \$504 per month. JA 79. She could find no apartment in California at the Colorado grant amount. JA 81. She too was afraid she would become homeless. *Id.*

#### d. Expert Testimony.

Uncontroverted expert testimony before the district court demonstrated that these three families' harsh predicaments were the inevitable consequence of California's discriminatory residency requirement:

The costs of living in California are among the highest in the nation. This can be demonstrated by examining differences in housing costs, typically the largest budget expense for AFDC families . . .

. . . California's housing costs are higher than in any other state with the possible exception of Massachusetts . . .

Because California's housing costs are so high, the residency requirement will place recently arrived AFDC families on an inferior footing relative to AFDC recipients in the state from which the newcomers recently moved. In all but one of the 46 states (including the District of Columbia as a state) in which AFDC benefit levels are lower than in California, the average statewide costs of modest housing are also lower than in California. This means that newly entered residents from 45 of these 46 states typically will face higher costs of living without any increase in their AFDC benefits to help meet those costs.

JA 87, 88.<sup>8</sup> As a consequence, for example, a newcomer family of four living in California, but previously from Mississippi, would receive assistance of only \$144 per month, which is \$599 per month less than an otherwise identical family of longer term residency in California would receive, an 80% reduction to a sum which does not remotely approach the amount necessary to secure housing in California. JA 54, 68, 72, 76, 81. Accordingly, the expert concluded, "[t]he reduced grants can be expected to force some newcomer AFDC families to move into overcrowded or substandard quarters, or . . . even to become homeless, all of which can pose significant health and safety risks to residents, especially children." JA 89.

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<sup>8</sup> Housing costs are an appropriate gauge of the cost of living for poor people because the poor spend such a substantial share of their income for housing. In 1989, 56% of all poor renters and 74% of unsubsidized poor renters spent at least half of their income for rent and utilities. Edward B. Lazere, et al., *A Place to Call Home: The Low Income Housing Crisis Continues*, 6, 7 (December 1991). See JA 87.

### C. The Status of the State's Federal Waiver Request.

Although the Secretary of HHS approved the State's waiver request, see Part B.1.c. *supra*, on October 29, 1992, and California began implementing the provision on December 1, 1992, the Ninth Circuit vacated this approval in *Beno v. Shalala*, 30 F.3d 1057. *Beno* held that one of the waivers necessary to implement the residency provision was invalid because the Secretary had failed to consider public comments objecting to the proposed experiment.<sup>9</sup> After the Ninth Circuit denied the State's petition for rehearing in *Beno*, neither the State nor the Secretary of HHS petitioned this Court for review. Although the State submitted a new waiver request, the Secretary of HHS has not approved it. The State acknowledges, as it must, that in the absence of the waiver, the statute cannot be implemented, Pet. Br. at 5 n.3, raising the issue of whether this case is moot.

### SUMMARY OF ARGUMENT

California's statute, enacted with the unconstitutional purpose of deterring in-state migration, impermissibly treats new bona fide residents as second-class citizens by denying them AFDC benefits equal to those granted to longer-term California residents who are otherwise equally needy. Two families with identical needs, identical resources, and identical numbers of hungry mouths to feed are granted different amounts of money solely because one of them has recently moved across state lines.

This discrimination is unconstitutional. The fundamental right of interstate travel and migration forbids a

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<sup>9</sup> For example, the *Beno* court noted that "the Secretary . . . approved cuts of up to 80% to recent entrants . . . without examining any data about the cost of living in California or other issues relevant to [a determination of whether the experiment posed a danger to human subjects.] *Beno*, 30 F.3d at 1076.



state from treating new residents differently from old residents in order to discourage their entry or to penalize them for their entry if they cross state lines anyway. Depriving new residents of basic subsistence payments that are granted to longer-term residents constitutes such a penalty on the right to travel and deterrent to its exercise. Thus the only question in this case is whether the State may escape its constitutional obligation to treat new and old residents equally where it grants new residents the dollar amount of AFDC benefits they would have received in their prior state of residence.

The answer must be no. Under this Court's governing precedents barring discrimination against those who migrate across state lines, the California law is subject to exacting scrutiny for any of three reasons. First, it was enacted with an avowed purpose long deemed invalid by this Court: the purpose of fencing out needy indigents. Second, it penalizes the exercise of the right to travel by depriving newer families of the ability to obtain basic necessities for survival. As the district court found, granting new indigent residents AFDC benefits at the level of their prior state of residence affords them a fraction of the AFDC benefits a longer-term Californian in identical circumstances would have received - up to 80% less, if one migrates from Mississippi, or 45-70% less if one migrates from Louisiana, Oklahoma or Colorado as Plaintiffs did. Third, the California statute thus has, as intended, a powerful deterrent effect on interstate movement.

Accordingly, the statute is subject to strict scrutiny, which it cannot survive. Its goal of fencing out indigents is impermissible. And had the Legislature genuinely intended to save money by the residency provision, as the State now argues, far less discriminatory means were available: the claimed savings from this provision amount to the equivalent of only 76 cents per existing AFDC recipient per month.

Even if the statute were deemed not to trigger strict scrutiny by impermissibly burdening the right to travel, it nonetheless violates the Equal Protection Clause under

rationality review. For no permissible rational basis supports the distinction between new residents and old residents or the distinctions among new residents that California has drawn based upon prior states of residence. As the district court found, new residents do not have lesser needs than longer-term residents. Nor do new residents migrating from Mississippi need 80% less to live in California than new residents migrating from Alaska. This Court's precedents make clear that, even if saving money is a permissible goal, it may not be realized on the backs of new residents alone.

Finally, the California law also violates the Privileges and Immunities Clause of Article IV because it unjustifiably discriminates against new bona fide residents by treating them as Louisianians, Oklahomans, or other out-of-staters rather than as citizens of California.

This Court need not reach the merits of these questions, however, as the case is moot. Since the ruling below, the Ninth Circuit, in a separate action, has vacated one of the federal waivers necessary to implement the state law. Thus, no live case or controversy now exists and the case should be dismissed as moot.

## ARGUMENT

### I. THE CALIFORNIA STATUTE IMPERMISSIBLY DISCRIMINATES AGAINST NEW STATE RESIDENTS, IN VIOLATION OF THE EQUAL PROTECTION CLAUSE AND THE FUNDAMENTAL RIGHT TO TRAVEL.

As this Court has long held, our Constitution was "framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin v. Seelig*, 294 U.S. 511, 523 (1935) (Cardozo, J.). Accordingly, it is also well settled that "the right of free ingress into other States, and egress from them." *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869). This right to travel from one state to another "occupies a position



fundamental to the concept of our Federal Union" and "has long been recognized as a basic right under the Constitution." *United States v. Guest*, 383 U.S. 745, 757-58 (1966); see *id.* at 758 ("a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created").<sup>10</sup>

The principle of freedom of interstate travel and migration is thus an integral part of our federal system, and has received this Court's "unquestioned historic acceptance." *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 902 (1986) (plurality opinion). It is a fundamental structural postulate of our Constitution. See *id.* (right to travel may be "inferred from the federal structure of government adopted by our Constitution"). It is embodied in this Court's longstanding construction of the Equal Protection Clause to bar discrimination against new state residents. And various members of this Court

<sup>10</sup> As explained early on by this Court:

For all the great purposes for which the Federal government was formed we are one people, with one common country. We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own states.

*Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 48-49 (1868), (quoting from *The Passenger Cases*, 48 U.S. (7 How.) 283, 492 (1849) (Taney, C.J., dissenting)); see also *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869); *Edwards v. California*, 314 U.S. 160, 173-74 (1941); *Kent v. Dulles*, 357 U.S. 116, 126 (1958); *Shapiro v. Thompson*, 394 U.S. 618, 629-31, 634 (1969); *Dunn v. Blumstein*, 405 U.S. 330, 338 (1972); *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 254 (1974); *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1982); *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901-03 (1986).

have found it reflected in other provisions of the Constitution as well.<sup>11</sup>

In keeping with this principle, no state may erect a wall at its borders to screen out citizens of other states. Nor may any state erect an invisible wall against interstate migration in the form of discriminatory treatment of newcomers upon arrival. As the plurality in *Soto-Lopez* observed, this Court has long protected new residents of a state "from being disadvantaged, or from being treated differently, simply because of the timing of their migration." *Soto-Lopez*, 476 U.S. at 904 (citing *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 618 n.6 (1985); *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1982); *Memorial Hospital v.*

<sup>11</sup> For example, the freedom of interstate travel or migration has been rooted in the Privileges and Immunities Clause of Article IV, see, e.g., *Zobel v. Williams*, 457 U.S. 55, 71 (1982) (O'Connor, J., concurring in judgment) (privileges and immunities analysis "supplies a needed foundation for many of the 'right to travel' claims discussed in the Court's prior opinions"); *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869) ("[W]ithout some provision of the kind . . . the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."), in the Commerce Clause, see *Edwards v. California*, 314 U.S. 160, 172-74 (1941), in the Privileges and Immunities Clause of the Fourteenth Amendment, see *Edwards*, 314 U.S. at 178-79 (Douglas, J., concurring); *Twining v. New Jersey*, 211 U.S. 78, 97 (1908), and in the Fifth Amendment, see *Kent v. Dulles*, 357 U.S. 116, 125-126 (1958) ("The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment. . . . [T]hat right was emerging at least as early as the Magna Carta. . . . Freedom of movement across frontiers. . . , and inside frontiers as well, was a part of our heritage. . . . Freedom of movement is basic in our scheme of values."); see also William Cohen, *Equal Treatment for Newcomers: The Core Meaning of National and State Citizenship*, 1 Const. Comm. 9, 17 (1984) (locating prohibition on discrimination against new state residents in the Citizenship Clause of the Fourteenth Amendment).

*Maricopa County*, 415 U.S. 250, 261 (1974); *Shapiro*, 394 U.S. 618, 620 n.3 (1969)). Accordingly, this Court has generally subjected such discrimination against new state residents to the strictest scrutiny under the Equal Protection Clause. "[A]ny classification which serves to penalize the exercise of th[e] right [to travel], unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969) (emphasis in original).

Under this exacting standard, this Court has consistently struck down durational residency requirements with respect to benefits that support the basic necessities of life. In *Shapiro v. Thompson*, the Court invalidated state denial of welfare assistance to residents who had not yet lived for a year within the state. And in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974), the Court invalidated state denial of publicly funded non-emergency medical care to residents who had not yet lived for a year within the state. As the Court later noted in *Maher v. Roe*, 432 U.S. 464 (1977), *Shapiro* and *Maricopa County* "recognized that denial of welfare to one who had recently exercised the right to travel across state lines was sufficiently analogous to a criminal fine to justify strict judicial scrutiny." *Id.* at 474 n.8. See also *Dunn v. Blumstein*, 405 U.S. 330, 339-60 (1972) (invalidating one-year residency requirement for voting).

Even where this Court has declined to reach strict scrutiny, it has nonetheless invalidated, as offensive to Equal Protection, state schemes that make public benefits dependent upon the timing of one's residency in the state. In *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), for example, this Court struck down as irrational a New Mexico law granting a tax exemption to Vietnam veterans only if they had resided in the state prior to a specified date. And in *Zobel v. Williams*, 457 U.S. 55 (1982), this Court invalidated as irrational an Alaska statute that distributed income from natural resource development to state residents based upon the year in which they had established residency in the state.

The State does not question the existence of the fundamental principle of free interstate migration, nor does it seek to overturn any of this well-established law.<sup>12</sup> Rather, the State's argument stands or falls on the proposition that California does not "discriminate" against or "penalize" new state residents as did the states in these prior cases, because California provides new residents

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<sup>12</sup> While the State makes no such radical argument, one amicus curiae supporting the State goes so far as to urge that *Shapiro v. Thompson* and its progeny be overruled. See Pacific Legal Foundation ("PLF") Br. at 20-22. *Stare decisis* plainly precludes this result. As this Court reiterated only three Terms ago, "the very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable." *Planned Parenthood v. Casey*, 112 S. Ct. 2791, 2808 (1992).

Nor is there reason for any exception to *stare decisis* here. See *id.* at 2808-09. First, *Shapiro* has in no sense proven "unworkable" in practice, as this Court and the lower federal and state courts have relied on its principles routinely and without any difficulty. Second, for a quarter century, those who would migrate across state lines "have relied reasonably on [*Shapiro's*] continued application." *Id.* at 2809. They "have ordered their thinking and living," *id.*, around the constitutional promise that they need not be "poverty-bound to the place where [they have] suffered misfortune," *Edwards v. California*, 314 U.S. at 185 (Jackson, J., concurring), but instead might seek a better life for themselves and their families in states with better opportunities.

Third, "no evolution of legal principle has left [*Shapiro's*] doctrinal footings weaker than they were in [1969]." *Casey*, 112 S. Ct. at 2810. The fundamental principle that we "sink or swim together" has in no way attenuated over time. Finally, time has not eroded *Shapiro's* factual assumptions. Interstate mobility without loss of potential subsistence benefits is at least as crucial to the efficient allocation of labor today as it was in 1969, if not even more so in light of increasing competition in the global economy. In short, "the sum of the precedential inquiry . . . shows [*Shapiro's*] underpinnings unweakened in any way affecting its central holding." *Id.* at 2812.



some welfare benefits in an amount equal to AFDC levels in their prior states of residence – however inadequate those funds might be for a family's survival in California.

The State's argument is wholly fallacious and should be rejected by this Court. First, the California statute implicates the right to travel as surely as the laws struck down in *Shapiro* and its progeny. Here as in *Shapiro*, the state purposely seeks to drive away migrating indigents from its doors. Here as in *Shapiro*, it does so by denying new residents the basic necessities of life – that is, the level of assistance the state Legislature has deemed appropriate for subsistence in California.<sup>13</sup> Here as in *Shapiro*, the statute's effect is to deter the migration of poor families to the state who would otherwise come for reasons unrelated to the receipt of welfare assistance, and to penalize those who must come anyway. Thus, here as in *Shapiro*, the State's deliberate discrimination against indigent newcomers must be subjected to strict scrutiny, which it cannot survive. See Parts I.A and I.B, *infra*. Second, even if strict scrutiny were not applied, the California statute violates the Equal Protection Clause because it draws a distinction between new and old residents, and further distinctions among new residents, that bear no rational relationship to any permissible state goal, including fiscal need. See Part I.C, *infra*.

#### A. The Statute Triggers Strict Scrutiny.

This Court has held that a state law triggers strict scrutiny when it implicates the fundamental right to travel in any one of three ways: (1) "when impeding [interstate] travel is its primary objective"; (2) "when it uses any classification which serves to penalize the exercise of that right"; or (3) "when it actually deters such travel." *Soto-Lopez*, 476 U.S. at 903 (citations and internal

<sup>13</sup> The denial in *Shapiro* was not in all instances total either; as this Court pointed out, two of the three states there offered "partial assistance." *Shapiro*, 394 U.S. at 635.

quotations omitted); *accord id.* at 920-21 (dissent). While any one of these features is sufficient to require strict scrutiny, the California statute suffers from all three.<sup>14</sup>

#### 1. The statute aims at inhibiting interstate migration.

This Court has repeatedly recognized that a law enacted for the purpose of inhibiting migration into the state is virtually *per se* unconstitutional. See *Hooper*, 472 U.S. at 620 n.9; *Zobel*, 457 U.S. at 62 n.9; *Memorial Hospital*, 415 U.S. at 263-64; *Shapiro*, 394 U.S. at 629. "If a law has 'no other purpose than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional.'" *Id.* at 631 (quoting *United States v. Jackson*, 390 U.S. 570, 581 (1968)).<sup>15</sup>

<sup>14</sup> Whether styled an infringement of the fundamental right to migrate or a denial of equal protection, once the Court has determined that a law facially discriminates against newcomers and impinges on their fundamental right to migrate in at least one of the three ways identified above, strict scrutiny is required. *Shapiro*, 394 U.S. 618; *Soto-Lopez*, 476 U.S. at 903 and n.4 (plurality); see also *id.* at 920-921 (dissent). "[T]he right to travel, when applied to residency requirements, protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents", and as such, right to travel analysis can be considered "a particular application of equal protection analysis." *Zobel*, 457 U.S. at 60 n.6.

<sup>15</sup> That impermissible statutory purpose alone triggers strict scrutiny is a familiar principle in our constitutional law. See, e.g., *Church of Lukumi Babalu Aye v. City of Hialeah*, 113 S. Ct. 2217, 2227 (1993) ("if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is . . . invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest . . ."); *Arlington Heights v. Metro. Housing Corp.*, 429 U.S. 252, 265 (1977) (proof of racially discriminatory intent sufficient to trigger strict scrutiny under Equal Protection Clause); *Edwards v. Aguillard*, 482 U.S.



This Court has held such an exclusionary purpose equally forbidden when the newcomers sought to be excluded happen to be poor. "[T]he purpose of inhibiting migration by needy persons into the state is constitutionally impermissible." *Shapiro*, 394 U.S. at 629 (emphasis added). Nor can a state save such a statute by arguing that it seeks to exclude only those incoming poor persons who are dependent on state support.<sup>16</sup> In *Shapiro*, the states argued that they should be free to deter "those who would enter the state solely to obtain larger benefits." *Id.* at 630. This Court expressly rejected that argument:

a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally. Implicit in any such distinction is the notion that indigents who enter a State with the hope of securing higher welfare benefits are somehow less deserving than indigents who do not take this consideration into account. But we do not perceive why a mother who is seeking to make a new life for herself and her children should be regarded as less deserving because she considers, among other factors, the level of a State's public assistance. Surely such a mother is no less deserving than a mother who moves into a

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578, 593-94 (1987) (purpose to promote religion renders statute presumptively invalid under the Establishment Clause); *Madsen v. Women's Health Center*, 114 S. Ct. 2516, 2523 (1994) (in determining whether a law is content-based in presumptive violation of the Free Speech Clause, "[w]e . . . look to the government's purpose as the threshold consideration.").

<sup>16</sup> The California statute, of course, like the statutes in *Shapiro*, is not so limited: it disadvantages *all* new families, including those like Plaintiffs' who come for reasons unrelated to the receipt of welfare assistance, and those who are not poor when they arrive but suffer misfortune during the first year.

particular State in order to take advantage of its better educational facilities.

*Shapiro*, 394 U.S. at 631-632.<sup>17</sup>

This Court has since reaffirmed consistently that a statute intended to deter or restrict interstate migration by indigents – even those seeking social services – necessarily requires strict scrutiny. For example, in *Memorial Hospital*, the Court stated that,

to the extent the purpose of the requirement is to inhibit the immigration of indigents generally, that goal is constitutionally impermissible. . . . Moreover, "a State may no more try to fence out those indigents who seek [better public medical facilities] than it may try to fence out indigents generally."

*Memorial Hospital*, 415 U.S. at 263-264 (citations omitted; bracketed phrase in original).<sup>18</sup>

More recently, the Court has reiterated *Shapiro's* unconstitutional purpose doctrine even where it has not needed to rely on it to invalidate residency-based laws. In both *Zobel* and *Hooper*, the Court repeated that a "state objective to inhibit migration into the State would encounter 'insurmountable constitutional difficulties.' "

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<sup>17</sup> Thus the constitutional right to migrate is not dependent on the immigrant's reason for migrating. Statutes that aim to reduce migration cannot be upheld on the basis that they target a subgroup of migrants based on their motivation for migrating. That is why the four amici states' distinction between those who come for higher welfare payments and those who, like Plaintiffs, come for other reasons, is legally irrelevant.

<sup>18</sup> See also *Memorial Hospital*, 415 U.S. at 282 (Rehnquist, J., dissenting) (distinguishing the Arizona law from one that "was specifically designed to . . . deter indigent persons from entering the State of California"); *id.* at 283 (distinguishing a "purposeful attempt to insulate the State from indigents"); *id.* at 284 ("purposeful barriers [were] struck down in *Edwards* and *Shapiro*"); *id.* at 285 ("the Court should examine . . . whether the challenged requirement erects a . . . purposeful barrier").

*Hooper*, 472 U.S. at 620 n.9 (quoting *Zobel*, 457 U.S. at 62 n.9 and citing *Shapiro*, 394 U.S. at 629). See *Soto-Lopez*, 476 U.S. at 903 (plurality); *id.* at 920-22 (dissent).

In this case, the Court need look no further than the face of the statute in order to find that it is impermissibly aimed at discouraging indigents from migrating to California. As the district court found, no other purpose could logically explain the distinctions the statute draws. If one does look further, the evidence of this purpose is overwhelming. The State has consistently and proudly proclaimed that the statute was passed in order to discourage and prevent poor families from settling in California, throughout both the statute's legislative history and the State's early representations in this case. Indeed, this purpose was the very selling point in its enactment. See pages 4-9, *supra*.<sup>19</sup>

Before this Court, the State does not contend that its statute could survive constitutional challenge if passed for the purpose of deterring interstate migration. Rather the State attempts a last-minute rewrite, claiming that the statute was actually passed for some other purpose than discouraging indigents from entering the state. The State now says that it was merely aiming at "lower[ing] state welfare expenditures" in a time of "worsening budget problems," and engaging in an "experiment in welfare reform" in order to "inform[ ] future decision-making." Pet. Br. at 18-19.<sup>20</sup>

<sup>19</sup> See also *Green*, 811 F. Supp. at 522-23 & n.14. Because the district court found that the statute penalized new residents, it did not need to make further detailed findings as to the statutory purpose. If any dispute remains about the purpose of the statute, the proper procedure would be to remand the matter to the district court for further findings.

<sup>20</sup> The State only once in its brief reveals the true purpose of the residency requirement: it details the migration data it plans

The State's attempt to rewrite history here is disingenuous at best. The record below is rife with admissions of the State's exclusionary purpose, which is in any event apparent on the statute's face. And no alternative purpose is plausible.<sup>21</sup> Federal law does not recognize benefit reductions solely to save funds with no other purpose as warranting a waiver from the Secretary of HHS. See *Benot*, 30 F.3d at 1069. ("The [waiver] statute was not enacted to enable states to save money. . . ."). In any event, it surely takes no "experiment" to determine that granting newcomers lower benefits than longer-term California residents will save money. Accordingly the State has consistently declined in its waiver requests to describe its statute as aimed merely at saving money.<sup>22</sup>

Even if saving money were a genuine *additional* purpose of the statute, it could not cleanse the record of the purpose to deter migration. The purpose of the statute to discourage migration cannot be made to disappear. If the state is "experimenting" in "reducing expenditures," it is

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to gather through implementation of the statute, belying the contention that the residency requirement is without any purpose to deter migration. Pet. Br. at 22 n.10.

<sup>21</sup> At the same time the Legislature passed the residency provision it also passed a general grant cut which the State describes as a work incentive program in the waiver request. Cal. Welf. & Inst. Code § 11450.01 (West Supp. 1994); CR 69, Ex. 12. Had the purpose of the residency provision not been to deter migration, there was no need for separate provisions - it could have simply increased the State's portion of the general grant cut by but 76 cents per recipient. See n.32, p. 40, *infra*.

<sup>22</sup> In its waiver requests, the State described the statute instead as a "project" designed to "reduce the incentive to migrate to California solely to seek higher public assistance benefits". JA 47; see JA 48, 50, 59, 121-122. The State cannot have it both ways. Either the statute was intended to deter migration, subjecting it to strict scrutiny in this case, or it was enacted only to save money, which is insufficient to sustain the waiver necessary to implement it.



doing so, impermissibly, solely on the backs of newcomers to the state. States are surely free to experiment with policies – including policies that save money – but not with our liberties or with the structural postulates of the Constitution. Economic secession from the union is not a constitutionally permissible experiment.

Put another way, if the State here is seeking any permissible fiscal ends, it is doing so by the impermissible means of discrimination against new state residents. This Court has easily seen through state attempts at dressing up economic protectionism as good social policy in the related context of dormant Commerce Clause litigation. As the Court has consistently noted, “ ‘the evil of protectionism can reside in legislative means as well as legislative ends.’ ” *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, 112 S. Ct. 2019, 2024 (1992) (quoting *Philadelphia v. New Jersey*, 437 U.S. 617, 626-27 (1978)). A protectionist statute might aim to “ ‘assure a steady supply of milk,’ ” or “ ‘to reduce waste disposal costs,’ ” in addition to aiming at favoring insiders over outsiders. *Id.* But the Court has never hesitated to strike such statutes down, notwithstanding that they aimed at permissible as well as impermissible goals.<sup>23</sup>

In short, even “a presumably legitimate goal” cannot save a statute that employs the “illegitimate means of

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<sup>23</sup> The Court has likewise consistently struck down taxes that discriminate against interstate commerce, “even where such tax was designed to encourage the use of ethanol and thereby reduce harmful exhaust emissions, . . . or to support inspection of foreign cement to ensure structural integrity” – again, benign aims that may not be advanced solely at outsiders’ expense. *Chemical Waste Management, Inc. v. Hunt*, 112 S. Ct. 2009, 2013 (1992) (citing *New Energy Co. v. Limbach*, 486 U.S. 269, 279 (1988) and *Hale v. Bimco Trading, Inc.*, 306 U.S. 375, 379-80 (1939)).

isolating the State from the national economy.” *Philadelphia v. New Jersey*, 437 U.S. at 627. Here too, the State’s discriminatory “experiment” in isolating itself from national poverty is impermissible. This Court has long condemned “parochial legislation” even if its “ultimate aim” was “to preserve the State’s financial resources from depletion by fencing out indigent immigrants.” *Id.* at 626-27 (citing *Edwards v. California*, 314 U.S. 160, 173-74 (1941)). If the State wishes to “experiment” in reducing welfare expenditures, it is constitutionally free to do so, as long as it reduces them equally for newcomers and oldtimers alike, or provides incentives for oldtimers as well as newcomers to seek employment.<sup>24</sup> But it may not seek to save money by deliberately driving new residents away. The California statute must be strictly scrutinized because it is inexorably tainted with the purpose of deterring migration.

## 2. The statute penalizes families for having exercised their right to migrate interstate.

Even absent an intent to deter interstate migration, state laws are subject to strict scrutiny if they penalize those who have exercised their right to migrate interstate solely on account of the exercise of that right. *See, e.g., Dunn*, 405 U.S. at 338; *Memorial Hospital*, 415 U.S. at 258; *Soto-Lopez*, 476 U.S. at 903; *accord id.* at 920-921 (dissent). The California statute plainly penalizes newcomer families solely on account of their recent move to the state.

By definition, the California statute, like all durational residency restrictions, “impos[es its] prohibition on

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<sup>24</sup> *See* Pet. Br. at 20 (discussing “work incentives” claimed to result from across-the-board grant cuts). There is, of course, no rational basis to impose work incentives only on new residents, as this Court specifically held in *Shapiro*. 394 U.S. at 637-638.



only those persons who have recently exercised [the] right" of interstate travel. *Dunn*, 405 U.S. at 341-42. Only recent migrants – those who have lived in California less than a year – are denied California's level of AFDC benefits. The California law thus disadvantages certain residents or treats them differently from similarly situated residents, "simply because of the timing of their migration." *Soto-Lopez*, 476 U.S. at 904.

Nor is this discriminatory disadvantage a trivial one. Even assuming that not all waiting periods for public benefits are "penalties" on the right to migrate, see *Memorial Hospital*, 415 U.S. at 258, and that a deprivation of benefits must have some minimum amount of impact in order to constitute such a penalty, California's durational residency statute plainly crosses that threshold because it deprives newcomers of a "basic necessity of life." *Id.* at 259. A law constitutes a penalty on migration, this Court has repeatedly stated, if it deprives new residents of vital governmental benefits or services. Distinguishing less essential government benefits such as in-state university tuition and licenses to practice a profession, hunt or fish, this Court concluded that "the right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the states to which they migrate as are enjoyed by other residents." *Id.* at 261 (emphasis added). "Governmental privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements." *Id.* at 259 (listing cases).

AFDC assistance falls well within the borders of this "vital service" category. In *Shapiro*, this Court observed that welfare is "aid upon which may depend the ability of the families to obtain the very means to subsist – food, shelter, and other necessities of life." *Shapiro*, 394 U.S. at 627. As then-Justice Rehnquist recognized, there is "virtual denial of entry inherent in denial of welfare benefits

– 'the very means by which to live,' *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970)." *Memorial Hospital*, 415 U.S. at 285 (Rehnquist, J., dissenting); see *id.* at 288 (*Shapiro* involved "an urgent need for the necessities of life").

By definition, AFDC benefits go only to families whose resources are less than a minimum subsistence level set by the state. Even the maximum benefits provided to long-time California residents are insufficient to meet what the state Legislature has determined is the minimum basic standard of adequate care in the state. Cal. Welf. & Inst. Code §§ 11450, 11452, 11453 (West Supp. 1994); JA 89-90, ¶¶ 21-22. Each welfare dollar received can mean the difference between being able to pay the rent and being homeless, being able to obtain necessary medicine and going untreated for severe illness and disease.

Even those Justices who disagree that deprivations of less vital government benefits such as employment preferences rise to the level of a penalty on interstate migration have nevertheless reaffirmed that state laws do penalize migration when they deprive newcomers of "essential governmental services" as in *Shapiro*, 394 U.S. at 629-31, and *Memorial Hospital*, 415 U.S. at 258-59. See *Soto-Lopez*, 476 U.S. at 921-922 (O'Connor, J., dissenting, joined by Rehnquist, J., and Stevens, J.); see also *Zobel*, 457 U.S. at 64 n.11. The AFDC benefits withheld here are at least as vital as the nonemergency medical care in *Memorial Hospital*, 415 U.S. at 259 ("medical care is as much 'a basic necessity of life' to an indigent as welfare assistance").

The State argues that, even though AFDC is a basic subsistence payment, California's durational residency requirement does not impose a penalty on new residents because it awards them the same amount of benefits that they would have received in the state from which they moved. Pet. Br. at 10-11. This assertion is incorrect both as a matter of law and fact.

First, the State misconceives this Court's penalty analysis as a matter of law. The State suggests that a penalty should be measured by the difference between the benefits enjoyed by the migrating party in the previous state and the new state of residence. This Court's precedents, however, hold that a penalty on interstate migration is to be measured instead by the difference between the benefits new state residents receive and the benefits that longer-term state residents receive – that is, the benefits new residents would have received but for the fact of their recent migration. The baseline is what other Californians receive, *not* what new residents would have received had they remained Louisianans or Oklahomans.<sup>25</sup> The relevant right is to travel without "being disadvantaged because of . . . recent migration" or "otherwise being treated *differently from longer term residents*." *Zobel*, 457 U.S. at 60 n.6 (emphasis added). The relevant examination therefore must be of how benefits are allocated within the state itself. *Cf.* n. 36, *infra*.

Once it has been determined that the nature of the sanction is of a certain significance, *see, e.g., Memorial Hospital*, 415 U.S. at 259 (nonemergency medical care); *Dunn*, 405 U.S. at 337 (right to vote), and that the classification discriminates against those who have exercised

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<sup>25</sup> The State asserts that the *Shapiro* and *Memorial Hospital* plaintiffs were in a worse position under the challenged statutes than they had been in their former states, and suggests that the resulting decisions in those cases turned on this point. Pet. Br. at 10-11. This assertion is baseless. This Court made no reference in those decisions to what benefits were or were not available to those plaintiffs in their former states. There was no evidence, for example, that the patient in *Memorial Hospital* received free nonemergency medical care in his previous state. As the district court noted below, "it was of no significance in *Memorial Hospital* that the nonemergency care provided by Maricopa County may have been much superior to the medical care provided elsewhere." *Green*, 811 F. Supp. at 521.

their right to migrate, the fact that the discrimination is partial rather than absolute cannot save it. It did not matter, for example, whether the medical care at issue in *Memorial Hospital* was for a serious illness or a sprained ankle, or whether the next election in *Dunn* was for the local school board or for Governor of the State. The State in each case still had to demonstrate a compelling interest for the challenged classification, which it could not do. California is withholding benefits essential to obtaining the basic necessities of life from those who exercised their right to migrate solely because of their exercise of that right. Thus it likewise must demonstrate that the law is necessary to serve a compelling state interest.

Second, the State's argument that there is no penalty here is in any event preposterous as a matter of fact. The amount that is sufficient to pay for minimal housing in Oklahoma or Louisiana or Mississippi will not begin to pay for minimal housing in California. The denial to new residents of up to 80% of the levels deemed appropriate by the state Legislature for longer-term residents in need of aid assures homelessness and destitution for new residents just as surely as a 100% denial would. As the district court found, California's statute "makes no accommodation for the different costs of living that exist in different states," 811 F. Supp. at 521, and fails to recognize that the cost of living "generally is much higher in California than elsewhere." *Id.* The State does not dispute these findings.<sup>26</sup> The families in the plaintiff class

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<sup>26</sup> The State asserts that the district court's analysis was flawed because it assumed that AFDC benefit levels were related to the standard of need in the states from which Respondents migrated, Pet. Br. at 13 n.5, and that a state's cost of living was related to its welfare payments, *id.* at 16 n.6. The district court made no such assumption nor is it necessary. The district court simply made the self-evident finding that since the cost of living generally is higher in California than elsewhere, the same grant level would not pay for as many necessities in California as it would elsewhere.



simply cannot survive in California on the limited payments that California's statute affords them. The State's claim that the California statute does not operate as a penalty on migration thus ignores the reality of economic diversity among the fifty states.<sup>27</sup> Homeless is homeless, whether the newcomer's AFDC grant amounts to \$144 or to zero, for no family can survive in California on \$144 a month. Accordingly, the California statute indisputably penalizes new state residents for their migration and therefore merits strictest scrutiny.<sup>28</sup>

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<sup>27</sup> The State also contends that it is not penalizing Plaintiffs but simply declining "to fund their move to California." Pet. Br. at 11 n.4. This, of course, is incorrect. Plaintiffs never requested funds to cover travel or moving expenses. Therefore, the State's reference to this Court's decision in *Harris v. McRae*, 448 U.S. 297, 317-318 (1980), is wholly inapposite. *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540 (1983), relied upon by amicus curiae Washington Legal Foundation ("WLF"), is likewise beside the point. *Regan* upheld the denial of a tax benefit to lobbying activity, but expressly reaffirmed that "the government may not deny a benefit to a person because he exercises a constitutional right." *Id.* at 545. That is exactly what the State has done in this case. Plaintiffs claim no right to a subsidy for their move, but do claim a right not to be penalized for it. See *Maier v. Roe*, 432 U.S. 464, 474-75 & n.8 (1977) (noting that, while denying Medicaid payments for abortion is a permissible non-subsidy, denying "general welfare benefits" to an otherwise needy woman on account of her having an abortion would be an impermissible penalty).

<sup>28</sup> The State has abandoned the argument in its Petition that this Court should fashion a new "undue burden" test for an infringement of the right to travel. No such test is needed here, where traditional equal protection standards have been fully workable for the last twenty-five years. Even if an undue burden analysis were applied here, however, California's law plainly imposes an undue burden on the right to travel. New residents are denied up to 80% of what longer-term residents in identical circumstances receive, and it is undisputed that that

### 3. The statute deters interstate migration.

Regardless of their purpose or penalizing effect, state laws are also subject to strict scrutiny if they deter persons from exercising their right to migrate between states. See, e.g., *Soto-Lopez*, 476 U.S. at 903 (plurality); *id.* at 920-21 (dissent). As this Court observed in *Shapiro*, state laws requiring indigent families to wait a year before receiving any subsistence level benefits are

well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute.

394 U.S. at 629.<sup>29</sup>

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margin of difference is enough to leave the new residents homeless and otherwise unable to afford the basic necessities of life.

<sup>29</sup> The Court specifically reaffirmed this holding in *Memorial Hospital v. Maricopa County*, where the county argued that denial of nonemergency medical care, unlike the denial of welfare, was "not apt to deter migration." This Court stated in response:

... it is far from clear that the challenged statute is unlikely to have any deterrent effect. A person afflicted with a serious respiratory ailment, particularly an indigent whose efforts to provide a living for his family have been inhibited by his incapacitating illness, might well think of migrating to the clean dry air of Arizona, where relief from his disease could also bring relief from unemployment and poverty. But he may hesitate if he knows that he must make the move without the possibility of falling back on the state for medical care should his condition still plague



These effects are just as self-evident where, as here, a state grants basic assistance to families with small children that is a fraction of the minimum necessary for subsistence. In these circumstances, poor families like Plaintiffs' face enormous pressure to return to their former state of residence or to refrain from coming to California in the first place. Such deterrent effects on interstate migration are inconsistent with our political and economic Union.<sup>30</sup>

These deterrent effects are compounded when would-be interstate migrants flee not only poverty but also domestic violence. As amici detail, victims of domestic violence, like Plaintiffs Green, Venturella and Bertolli, frequently must move to another state for their safety and that of their children. They are often unable to move unless they can temporarily rely on public assistance to sustain their families while looking for work in the new state.

As amici further point out, because abusers often stalk victims who leave, many abused women can stop violence that continues after a separation only by moving a great distance away from the abuser. These battered women are often extremely economically vulnerable.

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him or grow more severe during his first year of residence.

415 U.S. at 257.

<sup>30</sup> Expert testimony below established, for example, that "historical experience suggests that when residence conditions are attached to the receipt of relief, labor mobility is impeded, and so is economic growth." JA 118. Plaintiffs' expert noted that Adam Smith severely criticized provisions restricting relief to an indigent's geographic locality because they "prevented people from searching for useful employment, and also prevented employers from finding workers." JA 116. Such restrictions were held responsible for overpopulation in areas of high unemployment, impeding the emergence of national labor markets. JA 117.

They often must flee suddenly, leaving financial resources and jobs behind. Without adequate financial assistance in their new residences, they and their children must return to the batterers or face homelessness. As this Court recognized only three Terms ago, "Many abused women who find temporary refuge in shelters return to their husbands, in large part because they have no other source of income. . . . Returning to one's abuser can be dangerous." *Planned Parenthood v. Casey*, 112 S. Ct. 2791, 2828 (1992) (joint opinion); see generally Brief of Amici Curiae NOW Legal Defense and Education Fund, *et al.*

Finally, these deterrent effects of the California statute are to be expected, given the State's conceded aims in designing and enacting it. In the State's waiver request to the federal government, it quite candidly stated that it expected the statute to produce a deterrent effect: "HYPOTHESIS: If California's grant levels for incoming applicants are changed to the lesser of California's computed grant amount or the maximum aid payment of the State or U.S. Territories of prior residence, the rate of relocation into California will be reduced." JA 50. And before this Court, the State specifically argues that "the effect of welfare benefits on migration is strong and significant." Pet. Br. at 21.<sup>31</sup> For this reason too, strict scrutiny of the California measure is required.

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<sup>31</sup> Ironically, the study the State now relies on concluded that there was a dramatic increase in the interstate mobility of the poor almost immediately after *Shapiro* struck down durational residence restrictions on the receipt of welfare assistance. PAUL E. PETERSON & MARK C. ROM, *WELFARE MAGNETS* 17 (Brookings Institution 1990). If the State's study is to be believed, therefore, the only thing it proves of relevance to this case is that durational residence requirements for the receipt of welfare assistance significantly deter migration.

## B. The California Statute Fails Strict Scrutiny.

Under strict scrutiny, California must show that its discriminatory residency requirement is necessary to promote a compelling state interest. This it cannot do.

### 1. The alleged state fiscal interest is not compelling.

California advances only one permissible state interest in support of its residency requirement: to save money. This Court has repeatedly held that such a goal does not rise to the level of a compelling state interest. In *Shapiro*, this Court held:

We recognize that a state has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a state may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification.

394 U.S. at 633 (footnote omitted).

In *Memorial Hospital*, the Court again stated:

. . . a State may not protect the public fisc by drawing an invidious distinction between classes of its citizens . . . , so appellees must do more than show that denying free medical care to new residents saves money. The conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residence requirement which, in effect, severely penalizes

exercise of the right to freely migrate and settle in another State . . .

415 U.S. at 263 (citation omitted). See *Sosna v. Iowa*, 419 U.S. 393, 406 (1975) ("budgetary or recordkeeping considerations . . . insufficient to outweigh the constitutional claims.")

Contrary to the State's suggestion, Pet. Br. at 20, there is nothing exceptional about today's economic climate that suggests a need to erode basic constitutional protections and to permit discriminatory classifications where none were allowed before. To permit states "in times of stress and strain" to place themselves in positions of economic isolation would "invite a speedy end of our national solidarity." *Baldwin v. Seelig*, 294 U.S. 511, 523, 527 (1934).

California has been making the same arguments for over half a century, and even at the time of the Great Depression, this Court found them wanting:

The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. . . .

But this does not mean that there are no boundaries to the permissible area of state legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders.

*Edwards v. California*, 314 U.S. 160, 173 (1941). Petitioners surely cannot claim that their fiscal rationale is more compelling now than the Court found it during the Great Depression.



2. The statute is not necessary to promote the alleged state fiscal interest.

Even if California could somehow show that conserving fiscal resources were a compelling state interest, the statute would still fail strict scrutiny because less discriminatory means were available to achieve precisely the same end. *Cf. Dunn*, 405 U.S. at 360 (holding state interest in an informed electorate "too attenuated" to justify a durational residency requirement for voting).

The State claims that the discriminatory residency requirement would save it \$22.5 million annually. Pet. App. at A22, ¶ 5. The State of course could have raised revenues or cut expenditures elsewhere by an equal amount. But even assuming all these savings were to come out of the AFDC budget, they could easily have been realized without penalizing only newcomer families with identical needs to longer-term residents. Because according to the State only 6.6% of California AFDC families have resided in California for less than a year at the time they apply, the amount allegedly saved by virtue of the residency requirement represents less than one percent of the state funds California expects to spend on AFDC alone in a year. Pet. App. at A23, ¶ 2, A24, ¶ 5. The Legislature could have accomplished the same modest savings and avoided the invidious discrimination simply by making other AFDC cuts that would have had an impact on the overall AFDC budget equivalent to only 76 cents per recipient per month.<sup>32</sup> The State cannot show that this statute is necessary to save money given such obvious alternatives.

<sup>32</sup> The 76 cents per month figure is derived by dividing the estimated annual savings of \$22.5 million by the number of AFDC recipients in California (2,458,600 per month according to the State, Pet. App. at 23, ¶ 2) and then dividing by twelve. The actual monthly impact on the overall AFDC budget would be the equivalent of about a dollar and a half per recipient when federal matching funds are included. See Pet. App. at 21, ¶ 2.

C. Even if Strict Scrutiny Does Not Apply, The Statute Fails Rationality Review.

The State in effect concedes that California's budgetary concerns fail the compelling state interest test and argues that the Court should judge the statute by "the reasonable basis or rationality test." Pet. Br. at 18.<sup>33</sup> Even under rationality review, however, the California statute offends the Equal Protection Clause, as did the legislation invalidated in *Zobel*, *Hooper* and *Soto-Lopez*. There exists no rational basis for California's treatment of newer state residents as second-class citizens. While saving money is a legitimate state interest, it bears no rational relationship to the statute's distinctions between newer and older residents and among newer residents. See, e.g., *Zobel*, 457 U.S. at 61; *Shapiro*, 394 U.S. at 633 n.11; *Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966) ("the Equal Protection Clause . . . require[s] that, in defining a class subject to legislation,

<sup>33</sup> Amicus curiae PLF suggests a third alternative: a new ad hoc balancing test that PLF claims this Court announced in *Sosna v. Iowa*. This claim is incorrect. *Sosna* neither announced such a new test, nor even criticized the test employed in *Shapiro*, *Dunn* and *Memorial Hospital*. To the contrary, it reaffirmed those cases in distinguishing them. *Sosna*, 419 U.S. at 406.

*Sosna* involved a state interest far weightier than California's budgetary concerns here: namely, the State's interest in preserving its divorce judgments against collateral attack. After reviewing many reasons why the State's historic interest in the regulation of domestic relations was weightier than the state interests in the earlier cases, the Court noted the lack of less discriminatory means to further the State's objectives that were as effective as the means chosen. *Id.* at 407 n.20. The Court pointed out that a non-durational residency test was insufficient to assure the attachment to the State that application of its family laws required. *Id.* at 408; see generally *id.* at 406-09. Given the State's weaker justification and the availability of less restrictive means here, application of the *Sosna* analysis would not change the result in this case.



the distinctions that are drawn have some relevance to the purpose for which the classification is made").

First, the distinction the California statute draws between California citizens who have resided in California for less than a year and those who have resided in California for more than a year bears no rational relationship to the fiscal purpose alleged.<sup>34</sup> There is no reason why newcomers should bear a disproportionate share of the financial burden of ameliorating the state's fiscal problems by receiving lesser benefits than other state residents. AFDC is a need-based program and citizens who have lived in California for less than a year need food, shelter, and clothing in order to survive just as much as citizens who have lived in California for more than a year. As the district court specifically found, Plaintiffs are not better able to bear the loss of subsistence level benefits than longer term residents. *Green*, 811 F. Supp. at 523 ("This group of residents is no better able to bear the loss of benefits than a group randomly drawn."). As one legislator noted during the legislative debate:

What we are saying to children is, if your family happened to come here from another state looking for a job, and even found a job but was then [laid] off of that job, and there is no unemployment insurance; there is no other job opportunity, and to take care of your children you must be on welfare, that somehow their stomachs are a little bit smaller than the stomach of the person who lives next door who has lived in this state over a year; that their need for clothing for a young child going to school is a little bit less than the child living across the

<sup>34</sup> Since the State now asserts only fiscal reasons for the residency requirement, its attempted distinction of *Zobel* as a permanent classification does not withstand analysis. If it is rational to save money on the backs of newcomers for a year, it would seem to be rational to do so permanently.

street who may also be on welfare through no fault of that child, because the parent has been unable to find a job; that somehow that clothing will be a little bit cheaper because they will have some sort of certificate saying they haven't been here a year.

JA 37 (comments of Assemblyman Burton).<sup>35</sup> And as demonstrated above, California could easily save the

<sup>35</sup> Amicus curiae WLF argues that new residents have lesser needs because they can move more easily to less costly parts of the state. WLF Amicus Br. at 3-4, 10. This argument is baseless. There is no evidence in the record that a Mississippi grant level would cover housing anywhere in California, nor is there any evidence that Plaintiffs are better able to move than are longer-term residents. If anything, their needs were greater than those of longer-term residents both because they had the additional costs of setting up a household in a new state and because they knew far fewer people in the state who might help them.

WLF also suggests that states may pay higher benefits to longer-term residents in order to protect their "reliance interests," citing this Court's decision in *Nordlinger v. Hahn*, 112 S. Ct. 2326 (1992). This argument too is baseless. The property tax statute this Court upheld in *Nordlinger* did not single out new residents for especially harsh treatment. It allowed a higher tax rate for all new home purchases, regardless of how long the buyer had resided in the state. While a distinction between new and old home buyers rationally relates to their different expectation and reliance interests, no such differences are apposite here where the needs of all AFDC recipients are identical.

In any event, a State may not discriminate against newcomers in order to reward longer-term residents for past contributions to the public fisc. *Zobel*, 457 U.S. at 63. And welfare benefits are funded from current tax revenues "which may well be supported by the very newest arrival as well as by the long time resident," unlike capital facilities, in which longer term residents might have a greater expectation or reliance interest. *Memorial Hospital*, 415 U.S. at 286-87, 288 (Rehnquist, J., dissenting).

same amount without visiting deprivation solely on newcomers.

Second, the further distinctions the statute draws among new residents depending on their state of previous residence underscore the scheme's irrationality. The statute provides for multiple benefit levels for identically needy newcomer families. Even if the State could somehow show that new residents generally had lesser needs, there is certainly no evidence or basis to conclude that new residents migrating from Mississippi need 80% less to live in California than new residents migrating from Alaska.

California simply cannot show that the multiple distinctions made by the statute in this case among its own citizens<sup>36</sup> are rationally related to the fiscal purpose alleged. The utter unrelatedness of such distinctions to the fiscal purpose alleged virtually compels the conclusion that the statute must have been passed for the impermissible purpose of deterring migration. But in any event, as in *Zobel* and *Hooper*, such irrational distinctions invalidate the statute even at the level of rationality review.

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<sup>36</sup> *Zobel* makes clear that, contrary to the State's reasoning, the relevant comparison for equal protection purposes is among a state's own citizens. Alaska was the only state awarding oil-boom dividends. If the appropriate comparison had been of the relative entitlements of various states, as the State urges, then one of two scenarios would have ensued. Either every Alaska emigrant would have had a *Zobel*-type claim (permitting them to sue their respective new states for not awarding them comparable benefits) or no Alaska immigrant would have had a *Zobel*-type claim (if comparable benefits were not available before arriving in Alaska, then no basis exists to complain about getting too few benefits after arriving). As the Court recognized, however, the proper analysis looks to the inequality of distribution within the state and to the basis for distinctions between the state's own citizens. *Zobel*, 457 U.S. at 60-65.

## II. CALIFORNIA'S STATUTE VIOLATES THE PRIVILEGES AND IMMUNITIES CLAUSE OF ARTICLE IV BECAUSE IT DISCRIMINATES ON THE BASIS OF OUT-OF-STATE CITIZENSHIP.

The California statute also violates the constitutional guarantee that the "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. CONST. art. IV, § 2, cl. 1. The Privileges and Immunities Clause is based on a "norm of comity" that places citizens of each state "upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned." *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869); *Austin v. New Hampshire*, 420 U.S. 656, 660 (1975) (Privileges and Immunities Clause establishes a "norm of comity" that guarantees "equality of treatment"). By guaranteeing equality of treatment to the citizens of each state when they come within the jurisdiction of another state, this guarantee seeks to "fuse into one Nation a collection of independent, sovereign States." *Toomer v. Witsell*, 334 U.S. 385, 395 (1948); see *Baldwin*, 436 U.S. at 383 (prohibited distinctions hinder formation of a single Union); *Austin*, 420 U.S. at 660-61 (clause written with purpose of "forming a more perfect Union").

As Justice O'Connor pointed out in her separate concurrence in *Zobel*, 457 U.S. at 74-75, durational residency requirements violate the Privileges and Immunities Clause by imposing what the Court once called a "disability of alienage." *Paul*, 75 U.S. at 180. Discrimination among different classes of citizens within a state based on their length of residency in effect treats newer citizens as if they were noncitizens, classifying them "on the basis of their former residential status." *Zobel*, 457 U.S. at 75. "The fact that this discrimination unfolds after the nonresident establishes residency" does not insulate a state statute that is clearly aimed at nonresidents from scrutiny under



the Clause that was designed to protect them. *Id.* Under California's scheme, " 'the citizen of State A who ventures into [California]' to establish a home labors under a . . . disability," *id.*, and that disability is visited solely on the basis of prior out-of-state citizenship.

Like the Alaska scheme invalidated in *Zobel*, which divided the Alaska citizenry into numerous "classes of concededly bona fide residents," *Zobel*, 457 U.S. at 59, California's statute divides its citizens not only into two classes but into multiple subclasses that are defined by the state from which new residents have moved. Under the California statute, a newcomer's former state residency adheres to her for the first year that she lives in California. California thus treats some of its residents as if they were citizens of other states. For example, although the three named Plaintiffs became citizens of California upon moving to California, during their first year of residence, this statute treats Deshawn Green as if she were a Louisiana citizen by paying her according to Louisiana's AFDC plan, treats Debby Venturella as if she were an Oklahoma citizen by paying her according to Oklahoma's AFDC plan, and treats Diana Bertolli as if she were a Colorado citizen by paying her according to Colorado's AFDC plan.

The California statute thus both triggers and fails heightened scrutiny under the Privileges and Immunities Clause. First, interstate migration is plainly "sufficiently basic to the livelihood of the Nation" as to fall within the purview of the Privileges and Immunities Clause. *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 64-65 (1988) (citations omitted). As Justice O'Connor observed: "It is difficult to imagine a right more essential to the Nation as a whole than the right to establish residence in a new State." *Zobel*, 457 U.S. at 76-77. And California's scheme plainly "burdens those nonresidents who choose to settle in the . . . State," *id.* at 76, because withholding a portion of AFDC sustenance payments threatens the

"means to the nonresident's livelihood." *Baldwin*, 436 U.S. at 388; see also *Shapiro*, 394 U.S. at 627 (AFDC provides dependent children the "very means to subsist").

Second, the discrimination against nonresidents here is not sufficiently related to any substantial state objective. *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 284 (1985). While saving money and preserving the fiscal integrity of its programs are legitimate state objectives, the distinctions made by the California statute bear no substantial relationship to these objectives. A substantial reason for such discrimination does not exist "unless there is something to indicate that non-citizens constitute a peculiar source of the evil at which the [discriminatory] statute is aimed." *Hicklin v. Orbeck*, 437 U.S. 518, 525-26 (1978) (quoting *Toomer*, 334 U.S. at 398). There are no such indications here.<sup>37</sup> As explained in Part I.B.2 above, California's budgetary considerations are not related to the differences between new and old residents, or to the differences among residents of different states. They therefore do not justify making those distinctions. The

<sup>37</sup> Although the State wisely refrains from making such a claim, amicus curiae PLF, without citation to legal or factual authority, asserts that new residents receiving AFDC are a "peculiar source" of California's budget problems. PLF Br. at 11. The evidence in the record is to the contrary. According to the State, only 6.6% of California's AFDC families resided in another state in the previous year, and of those, only half were even on AFDC in the states from which they migrated. JA 29, 83-84, A24 ¶ 5. In fact, a greater percentage of children on AFDC in California are natives than are children in California generally. JA 23 ("85% of children receiving AFDC were born in California - while only 75% of California children are natives. ([1984] report of the non-partisan Legislative Analyst).") (typographical error in Joint Appendix). As amicus curiae National Welfare Rights & Reform Union points out, the rise in AFDC caseloads is a national phenomenon related to changes in the economy and in family composition, not to the interstate migration of indigents.



State's fiscal ends could be served as readily by non-discriminatory means.

Categorizing newcomers according to their prior state of residence is an affront to the Privileges and Immunities Clause. It goes a step beyond failing to treat noncitizens as if they were citizens; it fails to treat citizens as the citizens that they are. As the district court observed: "If this durational residency requirement were valid, then so would a measure limiting new residents to the same level of medical, educational, police, and fire services they received in the state of prior residence." *Green*, 811 F. Supp. at 522. Permitting this type of disparity in treatment, which varies according to the availability of government benefits and services in a citizen's prior state of residence, leads to absurd results wholly at odds with the conceptual foundations of our country.<sup>38</sup> Because the California statute treats newer citizens as if they were citizens of some other state, and proceeds to deprive them of crucial subsistence assistance on that basis, it offends the Privileges and Immunities Clause.<sup>39</sup>

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<sup>38</sup> For example, someone who moved to California from Nebraska, which has a unicameral state legislature, could be prohibited from voting for the state senate, because she could not vote for a state senate when she was in Nebraska. Similarly, someone who moved to California from Massachusetts could be prohibited from purchasing alcohol on Sundays, because Massachusetts' "blue laws" prohibit the sale of liquor on Sundays. Finally, anyone who moved to New Hampshire from another state could be required to pay her prior state's sales tax rate on all purchases, even though New Hampshire itself has no sales tax, because every other state levies a sales tax.

<sup>39</sup> Amicus curiae WLF urges the Court to analyze this case under the dormant Commerce Clause. WLF Br. at 8-9. Of course Commerce Clause analysis would not erase the violations of Equal Protection, right-to-travel or Privileges and Immunities rights here, none of which are waivable by Congress. But even under Commerce Clause analysis, the California statute is

### III. THIS CASE DOES NOT PRESENT A LIVE CASE OR CONTROVERSY IN LIGHT OF *BENO V. SHALALA*.

The California durational residency requirement only became operative upon approval by the federal government. See pp. 7-9, *supra*. As the State has acknowledged in its Petition for Writ of Certiorari, Pet. at 5 n.4, and now in its Brief on the Merits, "[o]n July 13, 1994, the Ninth Circuit vacated the waivers necessary to implement the provisions of this section." Pet. Br. at 5 n.3 (citing *Beno v. Shalala*). Although the State submitted a new waiver request, the Secretary of HHS has not approved it.

Once the Ninth Circuit vacated the waiver authorizing the reduction in assistance levels mandated by the residency requirement, the requirement itself ceased to exist. Even if constitutional, the State can no longer enforce the requirement against the plaintiff class. This case is therefore moot. *Kremens v. Bartley*, 431 U.S. 119, 127-29 (1977). See Respondents' Brief in Opposition to Petition for Certiorari at 19-21.

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plainly unconstitutional, absent express congressional authorization, because it is facially discriminatory. Apparently recognizing this, WLF argues that the HHS waiver approval was sufficient to authorize the California statute under the Commerce Clause. WLF Br. at 9. Even if that approval had not been vacated by the Ninth Circuit in *Beno*, mere federal administrative approval is not a substitute for the express congressional authorization that is required to validate state measures that otherwise would violate the Commerce Clause. See *Maine v. Taylor*, 477 U.S. 131, 138-40 (1986); *South Central Timber Dev. v. Wunnicke*, 467 U.S. 82, 88-93 (1984).

## CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Ninth Circuit should be affirmed or alternatively, the case should be dismissed as moot.

DATED: December 13, 1994

Respectfully submitted,

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In The  
**Supreme Court of the United States**

October Term, 1994

ELOISE ANDERSON, INDIVIDUALLY AND  
IN HER OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
AND RUSSELL S. GOULD, DIRECTOR,  
CALIFORNIA DEPARTMENT OF FINANCE,

*Petitioners,*

vs.

DESHAWN GREEN, DEBBY VENTURELLA, AND  
DIANA P. BERTOLT, ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit

**REPLY TO RESPONDENTS' BRIEF ON THE MERITS**

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No. 94-197

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In The  
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ELOISE ANDERSON, INDIVIDUALLY AND  
IN HER OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
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On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit

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**REPLY TO RESPONDENTS' BRIEF ON THE MERITS**

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Petitioners, Eloise Anderson, Director, California  
Department of Social Services, the California Department  
of Social Services, and Russell S. Gould, Director, Califor-  
nia Department of Finance, ("California") reply to  
respondents' brief on the merits as follows:

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## ARGUMENT

### I

#### **CALIFORNIA'S STATUTE DOES NOT OPERATE AS A PENALTY ON MIGRATION AND THEREFORE MUST BE UPHOLD IF IT HAS A REASONABLE BASIS**

Unhappy with the welfare reform authorized by the California Legislature in its enactment of California Welfare and Institutions Code section 11450.03 ("the Statute"), respondents here (plaintiffs below, "plaintiffs") challenge the Statute on constitutional grounds.

The issue here is not whether California's statute represents good public policy: the issue is, instead, the level of scrutiny by which the constitutionality of the Statute is to be adjudicated. Plaintiffs' brief on the merits is rife with their arguments that the Statute is not good public policy. However, such arguments are irrelevant. The issue here is whether or not the Statute should be subjected to a strict scrutiny analysis. As stated by plaintiffs on page 22 of their opposition brief on the merits, the relevant questions are therefore whether the Statute has the purpose of impeding travel as its primary objective, whether the Statute penalizes the exercise of the right to travel, and whether it actually deters travel. California's Statute does none of the above.

As noted in California's opening brief on the merits, the primary objective of the Statute is not to impede travel. As there is no purpose expressed in the Statute itself, as plaintiffs' exhibits do not reflect applicable legislative history, and as the principal effect of the Statute is to conserve limited state resources, it is clear that the

purpose of the Statute is to conserve California's scarce financial resources for all of its citizens.

On its face, the Statute does not erect effective and purposeful barriers to insulate California from indigents in the form of either criminal penalties or complete denials of public assistance. There is nothing in the terms of the Statute which would impede an indigent person from traveling to California. Thus, the words of the Statute make clear that the primary purpose of the Statute is *not* to impede travel.

Nor does the Statute penalize travel. The Statute does not deny welfare benefits outright, as was condemned in *Shapiro v. Thompson*, 394 U.S. 618 (1969) and in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974). The Statute does not create *permanent* distinctions based on the length of state residency as were struck down in *Zobel v. Williams*, 457 U.S. 55 (1982) (size of payments from oil revenues dependent upon years of residence in Alaska), *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985) (property tax exemptions based on state residency before a specific date), and *Attorney General of New York v. Soto Lopez*, 476 U.S. 898 (1986) (preferences for veterans based on length of state residency). The Statute explicitly provides that persons subject to the Statute receive *at all times* a constitutionally permissible amount of AFDC benefits: either what they received, or would have received, in their prior state of residence, or (after one year of residency) the full amount of the California grant.

Thus, it cannot be said that the Statute penalizes the right to travel as persons subject to the Statute are not deprived of the basic necessities of life. As noted above,

the Statute neither denies nor delays eligibility for AFDC benefits; to the contrary, it provides for a constitutionally permissible amount of AFDC benefits upon arrival in California, assuming all other conditions of eligibility are met. The Statute has no impact on the receipt of Medicaid benefits and, in fact, increases the amount of Food Stamps issued to persons subject to the Statute. Thus, California still provides a "safety net," offering the basic necessities of life.

The Statute's effect on travel is remote and incidental, at best. The Statute neutralizes the level of public assistance available in California as a factor in a person's decision to move to California. By having no effect on eligibility for welfare, the Statute imposes no penalty on interstate migration. Those impacted by the Statute still receive a constitutionally permissible level of public assistance. As with all people contemplating a change in their state of residence, public assistance beneficiaries must make decisions on where to live based, in part, on how far their dollars will go in their new home. With a state as large as California, newcomers to California may stretch their dollars depending on where they decide to settle within California.

All arguments of plaintiffs and their supporting amici relating to the high cost of living in California are irrelevant. As noted on page 17 of California's opening brief on the merits, it is constitutionally permissible for a state to set a benefit level below that state's standard of need. *Dandridge v. Williams*, 397 U.S. 471, 480, 483 (1970). The effect of so doing is a political decision vested in that state's legislature, and is not to be subjected to scrutiny by the judiciary. *Dandridge*, 397 U.S. at 482.

Finally, the Statute has not been shown to actually deter travel. Plaintiffs have not shown any person who was actually deterred from traveling to California because of the Statute's enactment.

The Statute does not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution as it is free from invidious discrimination against suspect classes. Thus, California need only show that the Statute is rationally related to a legitimate state interest. *Zobel v. Williams*, 457 U.S. 55, 60 (1981). This is the standard by which legislation involving the administration of public benefits is evaluated. *Dandridge*, 397 U.S. at 487.

Plaintiffs erroneously argue that the Statute has no rational purpose. The purpose of the Statute is to save government expenditures. When implemented, the Statute will save government expenditures. This is a legitimate state purpose. Plaintiffs argue that, in their opinion, the Statute does not save enough money to survive a rational basis inquiry. Plaintiffs do not state how much money the Statute would have to save in order to survive such inquiry, nor can they. The answer to that question is a policy decision left to the discretion of the California Legislature and not to plaintiffs and not to the judiciary.

## II

### **PLAINTIFFS MAY NOT RELY UPON MATERIALS REGARDING PROPOSITION 165 OR UPON MATERIAL NOT PRESENTED TO THE DISTRICT COURT TO SUPPORT THEIR ARGUMENTS REGARDING THE CONSTITUTIONALITY OF THE STATUTE**

Plaintiffs argue that the purpose of the Statute is analogous to other proposed legislative schemes



evidenced by materials plaintiffs submitted in support of their motion for preliminary injunction. These materials deal with California Proposition 165, a voter initiative that did not become law, and California Senate Bill 366 which also was not enacted into law. These materials are irrelevant to this Court's consideration of the Statute, as neither Proposition 165 nor Senate Bill 366 is a precursor of the Statute.

Accordingly, it is inappropriate for plaintiffs to rely on their Exhibits 1 (JA22), 5 (JA20), 8, 9, 10, 11 (JA31), and 13 (CR 69) because the precursor of Welfare and Institutions Code section 11450.03, i.e., the Statute, was Senate Bill 485. (Respondents' Brief on the Merits, p. 6.) Plaintiffs' exhibits are not part of the legislative history of Senate Bill 485. It is similarly inappropriate for plaintiffs to rely upon materials relating to California Proposition 165 (JA 20, 24, 61 and 99) as this proposition was turned down by the California electorate. It is also inappropriate for plaintiffs to rely upon materials in the *Beno v. Shalala* case currently pending before the district court, as those materials were filed after the hearing in front of the district court in this case (JA 121). Documents or letters not presented to the district court are not part of the record on appeal. *U.S. v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

Also, plaintiffs' exhibits are not competent evidence. While affidavits in support of a preliminary injunction need not fit all of the requirements of affidavits in support of a motion for summary judgment, 11 C. Wright and A. Miller, *Federal Practice and Procedure, Civil*, § 2949, p. 471 (1973), the materials in the referenced exhibits are not affidavits, verified pleadings, or transcribed deposition

materials. The exhibits clearly are not competent evidence.

*Flynt Distributing Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) noted that the urgency of obtaining a preliminary injunction necessitates a prompt determination and makes it difficult to obtain affidavits from persons who would be competent to testify at trial. The court held that the trial court may give even inadmissible evidence some weight when to do so serves the purpose of preventing irreparable harm before trial. However, the court in *Flynt* was dealing with a prohibitory injunction, i.e., one which merely maintained the status quo, and not with a mandatory injunction such as that sought by plaintiffs in this case. Therefore, this Court should not consider the referenced exhibits because they are not properly authenticated, they are hearsay to the extent they purport to be testamentary in nature, and they clearly are not relevant.

Proposition 165, Assembly Bill 671, the Governor's Budget as analyzed by the Legislative Analyst, and Senate Bill 366 did not become, and are not now, the law of the State of California. They are not relevant legislative history for the Statute at issue here which did become law in California.

The California Supreme Court was presented with a similar situation in the case of *Delaney v. Superior Court*, 50 Cal.3d 785 (1990). There, the court was called upon to determine the electorate's intent in passing a constitutional amendment by initiative which shielded a reporter from contempt proceedings in refusing to answer questions about unpublished information. *Delaney*, who was



seeking the information, argued that the court should look to the legislative history of California Evidence Code section 1070 to determine the intent of the voters in passing the Constitutional amendment. The court responded:

"The history, however, is of no help in that regard. Article I, section 2(b) is plain on its face, and we need not – indeed, should not – search for external indicia of the voters' intent. (Citation.) Moreover, the legislative history of section 1070 could, as a matter of logic, reflect only the Legislature's intent. [fn. omitted.] That history would not provide us with any guidance as to the voters' subsequent intent because none of the indicia of the Legislature's possible intent (committee analysis and digest and letters from the statute's author) were before the voters."

*Id.*, at p. 801, emphasis in original.

Plaintiffs' analysis is even more absurd. They rely on materials regarding an attempted amendment to the California Constitution, which was not passed, and other legislative materials which did not result in final legislation, to establish the intent of the California Legislature which passed the Statute. This Court should not be so detained. The absurdity here is even more pronounced since the ballot materials and the legislative analysis of *unpassed* bills do not reflect any legislative intent.

Finally, the Statute does not require resort to any materials for an understanding of its provisions. It means exactly what it says. There is no purpose expressed and none of plaintiffs' materials reflect applicable legislative

history. The purpose of the Statute is to conserve California's scarce financial resources for all of its residents.

### III

#### CALIFORNIA'S STATUTE DOES NOT VIOLATE THE PRIVILEGES AND IMMUNITIES CLAUSE

Although neither the district court nor the Ninth Circuit addressed this issue, plaintiffs contend that the Statute violates the Privileges and Immunities Clause of Article IV of the United States Constitution by substantially interfering with the right to migrate interstate. Plaintiffs primarily rely on *Zobel v. Williams*, 457 U.S. 55 (1982) as authority for their position that the Statute violates the Privileges and Immunities Clause. Plaintiffs misread *Zobel*, as they rely entirely on Justice O'Connor's concurring opinion, in which no other justice joined. Justice O'Connor's viewpoint is not reflected in the opinion of the Court. In *Zobel*, this Court rejected a privileges and immunities claim against an Alaska statute by which the state distributed income derived from its natural resources to the adult citizens of the state in varying amounts based on the length of each citizen's residency, stating:

"The statute does not involve the kind of discrimination which the Privileges and Immunities Clause of Art. IV was designed to prevent. That Clause 'was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy.' "

*Zobel*, 457 U.S. at 60 n.5, citing *Toomer v. Witsell*, 334 U.S. 385, 395 (1948).

Cases which uphold the application of the Privileges and Immunities Clause to statutes that treat persons differently on the basis of state residency, such as *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988); *Hicklin v. Orbeck*, 437 U.S. 518 (1978); *Toomer v. Witsell*, 334 U.S. 385 (1948); *Doe v. Bolton*, 410 U.S. 179 (1973); *United Building and Construction Trades v. Mayor*, 465 U.S. 208 (1984); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985); and *Austin v. New Hampshire*, 420 U.S. 656 (1975), all do so on the basis that an actual nonresident is involved. Cases which discuss the application of the Privileges and Immunities Clause, but do not uphold the application of it, such as *Baldwin v. Montana Fish and Game Comm'n*, 436 U.S. 371, 388 (1978) and *Paul v. Virginia*, 7 U.S. (8 Wall.) 168 (1869), also analyze the issue in terms of a distinction between residents and nonresidents. In contrast, this case involves only California residents.

A clear statement of the scope of the Privileges and Immunities Clause is found in *Toomer* in which the Court stated that the clause bars "discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States." 334 U.S. at 396.

Like the state law at issue in *Zobel*, the Statute does not discriminate between residents of California and residents of other states. In order to receive AFDC benefits in California, a person must be a resident of California. Welfare and Institutions Code section 11105. Therefore, the Privileges and Immunities Clause has no application to this case and does not afford grounds for invalidation of the Statute.

#### IV

#### THIS CASE PRESENTS A JUSTICIABLE CONTROVERSY AND IS NOT MOOT

Plaintiffs have argued both in their opposition to the petition for writ of certiorari (pp. 19-21) and now in their brief on the merits (p. 49) that this case is moot. California fully addressed this argument in its Reply to Opposition to Petition, pages 5-7. In brief, the Ninth Circuit order vacating the federal waiver necessary to implement the provisions of California's Statute is not a final judgment on the merits, but only an order granting a preliminary injunction and specifically instructing the District Court to remand the federal waiver request to the federal officials for further consideration. Thus, because the issues in this case are likely to recur and the underlying question persists, the controversy presented by this case is not moot. *Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 179 (1968).

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#### CONCLUSION

California is attempting to bring innovative solutions to a pressing national concern - welfare reform. As part of its attempt to fix a system which works for neither the states nor for the recipients, California (with federal approval) is attempting to experiment with a variety of changes to the current system of administering of AFDC benefits. The reasonable discretion of California to improve this system has been stymied by unwarranted strict scrutiny.

As with other statutes involving the administration of public benefits, the constitutionality of the Statute should be analyzed under the rational basis standard. Strict scrutiny is not the proper standard to be used because the right to travel is not penalized by operation of the Statute. At most, the only impact the Statute has on the right to travel is remote and incidental.

This Court should reverse the judgment of the Ninth Circuit and remand this case with instructions that the preliminary injunction be dissolved and the complaint be dismissed.

Dated: December 28, 1994

Respectfully submitted,

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Supreme Court, U.S.  
FILED

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No. 94-197

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**In the  
Supreme Court of the United States  
October Term, 1994**

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**ELOISE ANDERSON, individually and in her official  
capacity as Director, California Department of Social  
Services; CALIFORNIA DEPARTMENT OF SOCIAL  
SERVICES; THOMAS HAYES, Director, California  
Department of Finance,**  
*Petitioners,*

**v.**

**DESHAWN GREEN; DEBBY VENTURELLA; and  
DIANA P. BERTOLLT, on behalf of themselves and all  
others similarly situated,**  
*Respondents.*

---

**On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit**

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**BRIEF AMICUS CURIAE OF PACIFIC LEGAL  
FOUNDATION IN SUPPORT OF PETITIONERS**

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No. 94-197

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In the  
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ELOISE ANDERSON, individually and in her official  
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---

On Writ of Certiorari to the  
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for the Ninth Circuit

---

BRIEF AMICUS CURIAE OF PACIFIC LEGAL  
FOUNDATION IN SUPPORT OF PETITIONERS

---

IDENTITY AND INTERESTS OF AMICUS

Pursuant to Supreme Court Rule 37, Pacific Legal  
Foundation (PLF) respectfully submits this brief amicus  
curiae in support of petitioners Eloise Anderson, *et al.*  
Written consent to the filing of this brief has been granted by

counsel for all parties. Copies of the letters of consent have been lodged with the Clerk of this Court.

Pacific Legal Foundation is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose of engaging in litigation in matters affecting the public interest. Policy is set by a Board of Trustees composed of concerned citizens, many of whom are attorneys. PLF's Board evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community. PLF's Board has authorized the filing of an amicus curiae brief in this matter.

Pacific Legal Foundation is submitting this brief because it believes its public policy perspective and litigation experience in the welfare reform arena will provide an additional viewpoint with respect to the issues presented. PLF has participated in numerous other cases before this Court including welfare reform cases such as *Lascaris v. Shirley*, 420 U.S. 730 (1975), and *Geduldig v. Aiello*, 417 U.S. 484 (1974).

PLF believes that temporary, nondrastic restrictions on welfare benefits distributed to residents within their first year of arrival in a state do not violate the constitutional right to travel. The absolutist equal protection analysis of *Shapiro v. Thompson*, 394 U.S. 618 (1969), and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974), need not, and should not, control the outcome of this litigation. This Court's decisions have followed a trend away from the analysis in those two cases, and, in fact, that analysis has been unable to command a majority of this Court since 1974, a scant five years after it was introduced. PLF argues that this Court should substantially narrow or overrule the *Shapiro* and *Memorial Hospital* rulings regarding durational

residency requirements and the right to travel. In their place, this Court should provide an analysis that balances the interests of the immigrants against the interests of the state. Under this analysis, this Court should rule that reasonable restrictions on the receipt of public assistance benefits are fully constitutional.

### OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is *Green v. Anderson*, 26 F.3d 95 (9th Cir. 1994). The order of the trial court granting the respondents' motion for preliminary injunction and referenced by the Ninth Circuit opinion is reported at 811 F. Supp. 516 (E.D. Cal. 1993).

### SUMMARY OF ARGUMENT

The absolutist analysis of *Shapiro v. Thompson*, 394 U.S. 618, has been substantially diminished over time. This Court has applied a handful of different analyses to right to travel issues, thus undermining the controlling precedential effect of any one form of analysis. *Shapiro* was based on a strict scrutiny equal protection analysis. *Memorial Hospital* emphasized the concept of a "penalty" in the strict scrutiny analysis. *Sosna v. Iowa*, 419 U.S. 393 (1975), applied an ad hoc balancing test. *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), and *Zobel v. Williams*, 457 U.S. 55 (1982), were decided under a rational basis review, without addressing the proper standard of review. Justice O'Connor has twice advocated a two-pronged test based on the Privileges and Immunities Clause of Article IV of the Constitution. *Zobel*, 457 U.S. at 71-81 (O'Connor, J., concurring in the judgment); *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986) (O'Connor, J., dissenting). Meanwhile, other disparities in welfare



payments were upheld against equal protection challenges. *Dandridge v. Williams*, 397 U.S. 471 (1970); *Jefferson v. Hackney*, 406 U.S. 535 (1972).

The court below specifically relied on *Shapiro* and *Memorial Hospital* for its decision. *Shapiro* and *Memorial Hospital* represent an aberration in the right to travel analysis, when compared both to those cases which came before, e.g., *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1867), and those which came later. Before *Shapiro*, 46 states and Washington, D.C., had laws requiring new residents to wait a certain period before receiving welfare. *Shapiro*, 394 U.S. at 624 n.3. Now, several states have implemented reduced (but not eliminated) public assistance payments to new immigrants. *Green v. Anderson*, 811 F. Supp. 516, 523 (E.D. Cal. 1993) (listing California, New York, Wisconsin, and Minnesota). Given the temporary and nondrastic reduction of welfare benefits at issue in this case, Cal. Welf. & Inst. Code § 11450.03,<sup>1</sup> the state's necessity of a balanced budget to promote employment, and the ability to provide some amount of

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<sup>1</sup> California Welfare and Institutions Code § 11450.03 provides in pertinent part:

(a) Notwithstanding the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450, families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with paragraph (1) of subdivision (a) of Section 11450, not to exceed the maximum aid payment that would have been received by that family from the state of prior residence.

public assistance to *all* California residents no matter when their entry into the state, the statute should easily survive a constitutional challenge.

## ARGUMENT

### I

#### SHAPIRO AND ITS PROGENY DO NOT PROVIDE A DETERMINATE MEANS OF ANALYSIS

*Shapiro v. Thompson* is the hook on which the court below hung its hat. *Green*, 811 F. Supp. at 519, 523. *Shapiro* invalidated a one year residency requirement imposed before *any* welfare benefits could be collected because the Court found no compelling state interest capable of justifying the requirement. *Shapiro*, 394 U.S. at 642. Among the state interests the Court found admittedly permissible but noncompelling were (1) discouraging the influx of poor families; (2) facilitating the planning of the welfare budget; (3) providing an objective test of residency; (4) minimizing the opportunity for recipients to receive payments fraudulently from more than one jurisdiction; and (5) encouraging early entry of new residents into the labor force. *Id.* at 631-32, 634. The Court held that constitutional concepts require that all citizens "be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." *Id.* at 629. This is undoubtedly true.

Yet, the Court did not analyze the statutes at issue in the light of an "unreasonable burden or restriction." Rather, it invoked the usually fatal strict scrutiny. The Court viewed a state's responsibility to maintain a healthy fiscal policy with an attitude approaching scorn. *Shapiro*, 394 U.S. at 633. Perhaps in 1969, the states simply did not face the fiscal

crises that are now so often commonplace, particularly in California. Declaration of Dennis Hordyk, Petition for Writ of Certiorari at A21 (Hordyk Decl.). Justice Harlan, in dissent, immediately foresaw the problems with this analysis and said that when a statute affects only matters not mentioned in the Constitution, and is not arbitrary or irrational, the court is not entitled to pick out particular human activities, characterize them as "fundamental," and give them added protection under an unusually stringent equal protection test. *Shapiro*, 394 U.S. at 662 (Harlan, J., dissenting). Justice Harlan also recognized the long-range implications of the decision:

[T]he field of welfare assistance is one in which there is a widely recognized need for fresh solutions and consequently for experimentation. Invalidation of welfare residence requirements might have the unfortunate consequence of discouraging the Federal and State Governments from establishing unusually generous welfare programs in particular areas on an experimental basis, because of fears that the program would cause an influx of persons seeking higher welfare payments.

*Id.* at 674-75 (Harlan, J., dissenting). In California, the state government did expand its public assistance levels to extremely generous proportions when the state was experiencing a "boom" in population and economic growth. Declaration of John D. Healy, Petition for Writ of Certiorari at A23, ¶¶ 3-4 (Healy Decl.). With the inevitable recession that followed the expansion, California has sought to cut back its more profligate spending in ways to harm the fewest people as possible. *Id.* at A24, ¶¶ 7-8; Declaration of Michael C. Genest, Petition for Writ of Certiorari at A25-

A26, ¶¶ 4-6 (Genest Decl.). The court below refuses to permit California to control its own budget.

*Dunn v. Blumstein*, 405 U.S. 330 (1972), took the *Shapiro* analysis one step further. While noting the specific language in *Shapiro* that the decision did not purport to decide whether durational residence requirements could be used to determine voting eligibility (*Shapiro*, 394 U.S. at 638 n.21), the Court nevertheless found that a law requiring one year of state residence and three months of county residence before registering to vote *penalized* the right to travel by forcing a person who wishes to travel and change residences to choose between travel and the basic right to vote. *Dunn*, 405 U.S. at 342. *Dunn*, too, emphasized strict scrutiny as the measure of the constitutionality of the law. *Id.* at 343. Despite the Court's disclaimer that it was not "secretly requir[ing] the impossible,"<sup>2</sup> given the strict analysis, the unsurprising result was an invalidated statute. *Id.* at 360.

*Memorial Hospital v. Maricopa County* further expanded the *Shapiro* analysis. That case struck down a statute which prohibited residents of less than 12 months duration to receive publicly funded nonemergency medical care. *Memorial Hospital*, 415 U.S. at 254. The Court held that the statute penalized interstate travel because medical care is as much "a basic necessity of life" to an indigent as the welfare assistance in *Shapiro*. *Id.* at 259. The Court found that the right of interstate travel must be seen as insuring new residents the same right to vital government

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<sup>2</sup> In dissent, Chief Justice Burger refuted this statement, arguing that "no state law has ever satisfied this seemingly insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection." *Dunn*, 405 U.S. at 363-64 (Burger, C.J., dissenting).



benefits and privileges in the states to which they migrate as are enjoyed by other residents. *Id.* at 261. The Court applied strict scrutiny and struck down the statute. *Id.* at 269-70. One of the more bizarre threads that bind *Shapiro*, *Dunn*, and *Memorial Hospital* is the notion that no evidence need exist that any person was actually deterred from traveling by the challenged restrictions. *Shapiro*, 394 U.S. at 650 (Warren, C.J., dissenting); *Dunn*, 405 U.S. at 340; *Memorial Hospital*, 415 U.S. at 257-58. This admitted lack of deterrence should, at the very least, call into question whether the "right to travel" has been implicated at all. After all, if the whole point of the amorphous right to travel is to permit citizens of the United States to move freely throughout the country, the fact that the complainants in all of these cases *did*, in fact, move where they wanted to move, should have significant bearing on the analysis.

The *Shapiro* line of cases has been distinguished on a number of bases by this Court. As early as 1975, the Court had distinguished *Shapiro* and *Memorial Hospital* in a durational residency case. In *Sosna v. Iowa*, the Court upheld an Iowa statute which required one year of continuous residence in Iowa before a petition for divorce against a nonresident could be filed. *Sosna*, 419 U.S. at 395. The Court distinguished *Shapiro*, *Dunn*, and *Memorial Hospital* with the observation that "the durational residency requirements they struck down were justified on the basis of budgetary or recordkeeping considerations." *Sosna*, 419 U.S. at 406. Iowa's state interest was to ensure recognition of its divorce decrees by other states under the Full Faith and Credit Clause of the Constitution. This was considered a more potent state interest than fiscal matters. The Court upheld the statute without specifying a standard of review. The opinion balanced the state interest in favor of the statute against the burden on the right to travel, concluding that the former outweighed the latter. *Id.* at 406,

409-10. The Court emphasized that the gravamen of *Sosna*'s claim was not a *total deprivation*, but only delay. *Id.* at 410. This same statement distinguishes the case at issue from *Shapiro*, *Memorial Hospital*, and *Dunn*. In each of the earlier cases, the claimant was *totally* cut-off from welfare benefits, nonemergency medical care, or voter registration. This statute at issue in this case, in contrast, only *partially* restricts welfare payments for a limited time.

*Sosna* threw considerable doubt on the viability of the *Shapiro* line of cases.<sup>3</sup> Justice Marshall, in dissent, said the majority opinion "departs sharply" from *Shapiro*, substituting an "ad hoc balancing test" for strict scrutiny. *Sosna*, 419 U.S. at 418-19 (Marshall, J., dissenting). *Joseph v. City of Birmingham*, 510 F. Supp. 1319, 1335 n.23 (E.D. Mich. 1981) (upholding one year residency requirement for candidates for municipal office) interpreted *Sosna* as foreshadowing possible abandonment of the penalty analysis. Moreover, *Joseph* favored the balancing test used in *Sosna*, noting the particular factors to take into account: (1) the importance of the benefit withheld from recently arrived residents (this includes both the severity of the effects on the lives of these recently arrived residents who are denied the benefit and the constitutional stature of the benefit itself); (2) the extent of the interference with interstate travel (*i.e.*, the actual likelihood of deterring such travel); (3) the legislative intent; and (4) the governmental interests fostered by the law. Under this type of analysis, the California statute passes constitutional muster. *Joseph*, 510 F. Supp. at 1335 n.23. These four factors were derived from Justice Harlan's dissent in *Shapiro* (*Shapiro*, 394 U.S. at 663, 671

<sup>3</sup> See also *Vlandis v. Kline*, 412 U.S. 441, 452-54 (1973) (upholding waiting period for resident tuition at state universities).



(Harlan, J., dissenting)) which apparently formed the basis of the majority *Sosna* opinion. *Sosna*, 419 U.S. at 406-09 (majority); 419 (Marshall, J., dissenting).

Applying neither the *Shapiro* strict scrutiny analysis nor the *Sosna* balancing test, *Zobel v. Williams*, 457 U.S. 55, invalidated Alaska's oil reserve dividend giveaway in varying amounts based on the length of each citizens' residence (*id.* at 57, 65) under the rational basis test without reaching the question of whether the program penalized the exercise of the right to travel. *Zobel*, 457 U.S. at 60-61, 65. The Court found that rewarding citizens for past contributions was not a legitimate state purpose. *Id.* at 63. The Court distinguished the *Shapiro* line of cases because the Alaska statute did not impose any threshold waiting period before receiving benefits; rather, it created "fixed, permanent distinctions" between all residents of Alaska, depending on how long they have been in the state. *Id.* at 59 (emphasis added). *Zobel* is more notable for Justice O'Connor's concurrence using a very different analysis. Justice O'Connor suggests an approach based on the Privileges and Immunities Clause of Article IV of the Constitution. *Id.* at 74-78 (O'Connor, J., concurring). She argued that a statute must satisfy a two-part test if it burdens a nonresident or new resident who seeks to engage in an essential activity or exercise a basic right. *Id.* at 76. First, there must be something to indicate that noncitizens constitute a peculiar source of the evil at which the statute is aimed. *Id.* Second, the Court must find a substantial relationship between the evil and the discrimination practiced against the noncitizen. *Id.* Applying this test, Justice O'Connor found that even if new residents were a peculiar source of the "evil" of "partaking in current largesse without having made prior contributions," *id.* at 77, a contention Justice O'Connor found unpersuasive, the cure does not bear a substantial relationship to the malady because some people who migrated

to Alaska may have contributed significantly more to the state, both before and after their arrival, than have some natives. *Id.* at 78.

Even under this test, the California statute passes constitutional muster. First, it is California's population explosion, *i.e.*, new residents, combined with generous welfare benefits, that has stretched the public assistance budget to the breaking point. Second, the California statute bears a substantial relationship to this "peculiar source of evil" because it addresses, in mild terms, the additional expense wrought by the new residents.

In *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, the Court held that a New York state limit on civil service veterans' preference to only those veterans who were residents of the state when they entered military service is unconstitutional. The case generated several opinions. Only four justices (Brennan, Marshall, Blackmun, and Powell) held that the right to travel was violated. The penalty analysis in *Soto-Lopez* concentrated on the fact that the immigrant veterans were *permanently* barred from receiving civil service bonus points. *Id.* at 909. The plurality opinion found a "guiding principle" to tie together the various analyses described above: the right to migrate protects residents of a state from being disadvantaged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents. *Id.* at 904. That said, however, the plurality promptly "inferred" a penalty on interstate migration in *Zobel* and *Hooper* and returned to strict scrutiny review. *Id.* at 908. Justice O'Connor, in dissent, strongly chastised this maneuver, noting that "the plurality simply rejects the equal protection approach the Court has previously employed in similar cases [*e.g.*, *Hooper*], without bothering to explain why its novel use of both 'right to migrate' analysis and

strict equal protection scrutiny is more appropriate, necessary or doctrinally coherent." *Id.* at 919 (citations omitted) (O'Connor, J., dissenting). Note also, that this case elevates public employment to the same level as the "necessities of life" analyzed in *Shapiro* and *Memorial Hospital*. Chief Justice Burger, who provided the fifth vote in *Soto-Lopez*, would not have reached the right to travel issue at all because the case could have been resolved on straight equal protection grounds. *Id.* at 912-13 (Burger, C.J., concurring in the judgment). Thus, strict scrutiny for right to travel issues has not been accepted by a majority of this Court since *Memorial Hospital* in 1974. In *Soto-Lopez*, Justice O'Connor's dissent (joined by Justices Rehnquist and Stevens) was based on her analysis of the Privileges and Immunities Clause. *Id.* at 920 (O'Connor, J., dissenting). Finding any impact on the right to travel to be "ephemeral," Justice O'Connor used only the rational basis standard, which the law withstood. *Id.* at 923-24 (O'Connor, J., dissenting).

## II

### WELFARE BENEFITS CASES DECIDED IN THE SAME TIME PERIOD AS SHAPIRO UNDERCUT SHAPIRO'S ABSOLUTIST ANALYSIS

Citizens have no constitutional right to welfare benefits. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 33 (1973). Thus, it is instructive to overlay the cases in which welfare benefits are constitutionally denied, in whole or in part, with the cases that purport to straightjacket the way states distribute welfare benefits among their populations.

*Dandridge v. Williams*, 397 U.S. 471, upheld a Maryland regulation which resulted in some disparity in payments to the largest Aid to Families with Dependent

Children (AFDC) families against a challenge that the regulation violated the Equal Protection Clause. The Court established the following test:

In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." ... "The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific." "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

*Id.* at 485 (citations omitted). The Court recognized that public assistance programs may give rise to inequalities in their design and administration and nonetheless ruled: "But the Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all. It is enough that the State's action be rationally based and free from invidious discrimination." *Id.* at 486-87 (citations omitted).

The Court explicitly stated that it was not ruling that the Maryland policy before it was wise or best fulfilled the relevant social and economic objectives that the state might ideally espouse, nor that it was the most humane and just system that could be devised.



But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.

*Id.* at 487 (citations omitted). *Memorial Hospital*, 415 U.S. at 262 n.21, distinguishes *Dandridge* on the basis that the classification in *Dandridge* did not impinge upon a fundamental right. See *Graham v. Richardson*, 403 U.S. 365, 376 (1971). Yet, in *Memorial Hospital*, Justice Rehnquist pointed out the unintended consequences which could result from the Court's opinion--consequences which are just as likely in the case now before this Court:

Given a finite amount of resources, Arizona after today's decision may well conclude that its indigency threshold should be elevated since its counties must provide for out-of-state migrants as well as for residents of longer standing. These more stringent need requirements would then deny care to additional persons who until now would have qualified for aid.

*Memorial Hospital*, 415 U.S. at 279 (Rehnquist, J., dissenting). Thus, on the one hand, the Court says it will resist the temptation to become a super-legislature and allow the states to make the public assistance decisions; while on the other hand, the *Shapiro* line of cases severely curtails the

options available to the states. *Id.* at 287 (Rehnquist, J., dissenting).

In *Jefferson v. Hackney*, 406 U.S. 535, the Court upheld the Texas policy of providing a lower percentage of welfare benefits to families with dependent children than was provided to adult recipients, which was attacked as violating the Equal Protection Clause. Applying traditional rational basis analysis, the Court held that the disparities were neither irrational nor invidious. *Id.* at 547.

A legislature may address a problem "one step at a time," or even "select one phase of one field and apply a remedy there, neglecting the others." ... [T]he legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straightjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them.

*Id.* at 546-47 (citation omitted). This Court in *Jefferson* specifically addressed the question of providing a lower percentage of payment to certain classes of recipients.

Since budgetary constraints do not allow the payment of the full standard of need for all welfare recipients, the State may have concluded that the aged and infirm are the least able of the categorical grant recipients to bear the hardships of an inadequate standard of living. While different policy judgments are of course possible, it is not irrational for the State to believe that the young are more adaptable than the sick and elderly ....



Whether or not one agrees with this state determination, there is nothing in the Constitution that forbids it.

*Id.* at 548-49. By analogy, it is not irrational to believe that new residents are not disadvantaged by receiving the same amount of AFDC benefits as they would have received in their original state of residence (as well as additional California benefits that may or may not have had counterparts in the original state). The statute at issue in this case does not place immigrants to California in the position the Court believed they possibly faced in *Shapiro*—either stay where they were or starve. This statute maintains the level of benefits the recipients received at their former residence and also places no restrictions on receipt of non-AFDC benefits.

### III

#### FAILURE TO HALT THE EXPANSIVE SHAPIRO DOCTRINE LEADS TO THE CREATION OF EVER MORE FUNDAMENTAL RIGHTS

As demonstrated by the case summaries above, the right to travel is a slippery slope. The doctrine encompasses more and more state activity until it so firmly ties the hands of the states that they are incapable of performing even the most fundamental budgetary functions.

The formulation of the right to travel doctrine which forbids any restriction on a "necessity of life" has already been stretched well beyond the basics. *Memorial Hospital* began this trend with its announcement that *nonemergency* medical care was a necessity of life; *Soto-Lopez* relaxed the "necessity of life" requirement for strict scrutiny to any "very important" benefit or right. *Soto-Lopez*, 476 U.S.

at 907 (civil service examination bonus points). See *Hassan v. East Hampton*, 500 F. Supp. 1034, 1041 (E.D.N.Y. 1980) (applying strict scrutiny to a one year waiting period to obtain commercial shellfish license applicable to only a portion of the available shellfishing lands: "the ordinance burdens a critical aspect of plaintiff's existence, his right to pursue his livelihood; a right that is as much 'a basic necessity of life' as welfare assistance, non-emergency medical care and voting were found to be in earlier Supreme Court decision").

Moreover, certain courts are no longer content to leave the right to travel in the context of interstate travel; now some courts (and commentators) argue that *Shapiro* requires application of strict scrutiny to *any* statute which may impede movement of any kind within a state. See, e.g., *Lutz v. City of New York*, 899 F.2d 255 (3d Cir. 1990) (cruising ordinance struck down); Porter, *Toward a Constitutional Analysis of the Right to Intrastate Travel*, 86 NW. U. L. REV. 820, 821 (1992) (arguing that fundamental right to interstate travel has as a necessary corollary the right to intrastate travel). As Justice Harlan warned in *Shapiro*, the creation of fundamental rights protected by the almost certain result of strict scrutiny analysis to any statute which may impact those rights, set the Court down a road which has become more expansive and well-traveled. The nondrastic, temporary measure at issue in this case should *not* be subsumed into the amorphous (and expanding) right to travel.

THE SOSNA BALANCING TEST PROVIDES A FAIR  
MEANS OF PROTECTING THE RIGHT TO TRAVEL  
WHILE PERMITTING STATES SUFFICIENT  
LEEWAY TO ACCOMPLISH NECESSARY GOALS

Amicus respectfully suggests the use of the *Sosna* balancing test to determine the constitutionality of durational residency requirements. Applying the four factors set forth *supra*, the California statute must be upheld. First, public assistance in the form of AFDC payments certainly carries some importance. Given the place of this assistance in California's entire welfare scheme, however, the temporary, partial reduction of a single public assistance benefit is not of paramount importance. New residents are still entitled to a Special Needs Allowance for homeless assistance, to full Medi-Cal benefits, and an *increase* in Food Stamps. Genest Decl. at A26, ¶¶ 5-6. Moreover, California has *expanded* AFDC eligibility to include those who work 100 hours or more per month. *Id.* at ¶ 4. The constitutional stature of the benefit itself is not in doubt: there is no constitutional right to public assistance. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911).

Second, the actual likelihood of deterring interstate travel is close to nil. The lower court ducked this issue by noting that "lack of evidence in the record of actual deterrence is of no significance." *Green*, 811 F. Supp. at 521 n.12. Given that the new residents will receive the same amount of AFDC as they received in their former home, in addition to numerous other welfare benefits, *and* given that the petitioners in this lawsuit were obviously not deterred, travel to California is unlikely to be deterred.

Third, the legislative intent of the statute is a matter of some dispute. The lower court refers to a floor debate in which one of the sponsors of the legislation said the statute would protect the state's funds by eliminating an incentive for people to move to California. *Green*, 811 F. Supp. at 522 n.14.<sup>4</sup> Such selective reference to floor debates is a notoriously poor indicator of legislative intent. See *Conroy v. Aniskoff*, 507 U.S. \_\_\_, 123 L. Ed. 2d 229, 238 (1993) (Scalia, J., concurring). The court could have just as plausibly focused on the legislator's prefatory statement that the statute was needed, given the realization "that in fact funds are short in California today." *Green*, 811 F. Supp. at 522 n.14. Such an emphasis would coincide with the declarations filed by the State supporting that interpretation. Hordyk Decl. at A21-22; Healy Decl. at A23, ¶¶ 2-3, ¶¶ 7-8.

Fourth, the governmental interests fostered by the law include controlling state expenditures to comply with the state constitutional balanced budget requirement, encouraging early entry into the workforce, and providing basic public assistance to as many individuals as possible. These are certainly laudatory goals entitled to great weight. In any case, they must outweigh the minimal intrusion on the right to travel occasioned by the California statute.

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<sup>4</sup> The constitutional right to travel has never been interpreted to require states to *induce* migration.



RULES OF STARE DECISIS AND  
PRECEDENT DO NOT PREVENT  
THE SUBSTANTIAL NARROWING OR  
OVERRULING OF THE SHAPIRO LINE OF CASES

This Court has always acknowledged a power in constitutional questions—great or small—to revisit its past decisions, and modify or abandon them altogether. See *Brown v. Board of Education*, 347 U.S. 483 (1954), overruling *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), overruling *Swift v. Tyson*, 41 U.S. (16 Pet.) 1 (1842). Cf. *Graves v. People of the State of New York*, 306 U.S. 466, 491-92 (1938) (Frankfurter, J., concurring) (stating that "the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it").

Stare decisis is not authoritative when the precedent has proven "unsound in principle and unworkable in practice." *Webster v. Reproductive Health Services*, 492 U.S. 490, 518 (1989). The Court "has not hesitated to overrule decisions, or even whole lines of cases, where experience, scholarship, and reflection demonstrated that their fundamental premises were not to be found in the Constitution." *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 779 (1986) (Stevens, J., concurring). Moreover, the effect of stare decisis is limited in closely divided cases, or in cases in which there were vigorous dissenting opinions. *Payne v. Tennessee*, 501 U.S. 808, 828-29 (1991) (noting prior precedent could be overruled because they "were decided by the narrowest of margins, over spirited dissents challenging the basic underpinnings of those decisions").

In this case, reliance on *Shapiro* and *Memorial Hospital* is unwarranted. These cases temporarily elevated strict scrutiny equal protection analysis to the right to travel despite the lack of the "right to travel's" moorings in the Constitution. This Court has not actually followed the reasoning of these cases since 1974, yet obviously some lower courts, including the court below, still feel constrained by them. The *Shapiro* court itself noted that its decision bucked literally centuries of English and American tradition. *Shapiro*, 394 U.S. at 628 n.7 (noting that waiting period requirements date back at least to the English Law of Settlement and Removal of 1662). Moreover, Congress and 46 state legislatures had chosen to implement residency requirements for receipt of public assistance. *Shapiro*, 394 U.S. at 676 (Harlan, J., dissenting). The tremendous impact of the *Shapiro* line of cases in terms of the number of statutes it invalidated is still being felt today. California—as well as other states—have made a good faith effort to comply with the stringent demands of *Shapiro*. Such total compliance may not be possible; however, given the language of this Court's opinions since *Shapiro*, such total compliance is not necessary.

Some courts already find *Shapiro* unpersuasive. In *Jones v. Milwaukee County*, 168 Wis. 2d 892, 485 N.W.2d 21 (1992), the Wisconsin Supreme Court upheld a state statute which required 60 days residence to be eligible for general relief. The court addressed *Shapiro* and *Memorial Hospital's* "penalty" analysis, but held that 60 days without welfare is substantially less onerous than a one year deprivation; the minimal deprivation did not amount to a penalty on right to travel. *Id.* at 25-26. The court focused on numerous state interests. The court found legitimate interests, *inter alia*, in preserving the public fisc, conserving scarce taxpayer funds in upholding the law, and not encouraging "those who would precipitously alter their



situation in life without giving any thought to whether there is any reasonable prospect that they will be able to support themselves.'" *Id.* at 26. The *Jones* court relied in part in *Dandridge v. Williams*, 397 U.S. 471, which established welfare eligibility requirements that did not penalize the right to travel. *See supra* at 12-16. One might inquire whether the *total* loss of two months welfare in Wisconsin (which has generous benefits) is equivalent to a *partial* loss spread over 12 months in California (which also has generous benefits)? This case gives this Court the opportunity to choose one of the many tests applied to right to travel issues, and assert its primacy over the others. Amicus respectfully suggests the balancing test as the most fair means of determining the interests and rights of both the state and new residents.

#### CONCLUSION

Because the application of absolutist strict scrutiny to right to travel issues is grounded neither in the Constitution nor by a majority of this Court since 1974, the *Shapiro* and *Memorial Hospital* cases should not control the outcome of a temporary, partial reduction in welfare benefits. For the reasons described above, the Ninth Circuit erroneously struck

down the California temporary residency requirements unconstitutional and should be reversed.

DATED: November, 1994.

Respectfully submitted,

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No. 94-197

Supreme Court, U.S.  
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IN THE  
**Supreme Court of the United States**  
October Term, 1994

ELOISE ANDERSON, INDIVIDUALLY AND  
IN HER OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL  
SERVICES, *et al.*,

*Petitioners,*

v.

DESHAWN GREEN, *et al.*,

*Respondents.*

*On Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit*

BRIEF OF THE WASHINGTON LEGAL FOUNDATION;  
UNITED STATES REPRESENTATIVES MICHAEL  
HUFFINGTON, STEPHEN HORN, AND RICHARD POMBO;  
CALIFORNIA SENATORS K. MAURICE JOHANNESSEN,  
DAVID KELLEY, NEWTON RUSSELL, DON ROGERS, BILL  
LEONARD, PHIL WYMAN, TIM LESLIE, AND ROB HURTT;  
CALIFORNIA STATE ASSEMBLY MEMBERS MICKEY  
CONROY, RICHARD K. RAINEY, DEAN ANDAL, PAULA L.  
BOLAND, RICHARD L. MOUNTJOY, JAMES ROGAN, BILL  
MORROW, BERNIE RICHTER, BILL HOGE, DAVID  
KNOWLES, TRICE HARVEY, AND JAN GOLDSMITH

**AS AMICI CURIAE  
IN SUPPORT OF PETITIONERS**

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Date: November 16, 1994

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**IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1994**

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No. 94-197

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ELOISE ANDERSON, INDIVIDUALLY AND  
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On Writ of Certiorari to the  
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**BRIEF OF  
THE WASHINGTON LEGAL FOUNDATION,  
ET AL., AS AMICI CURIAE  
IN SUPPORT OF PETITIONERS**

---

#### INTEREST OF THE AMICI CURIAE

The Washington Legal Foundation (WLF) is a national non-profit public interest law and policy center with over 100,000 members and supporters nationwide whose

interests WLF represents. WLF engages in litigation and participates in administrative proceedings in a variety of areas and devotes a substantial amount of its resources to cases that affect the interests of voters and taxpayers. For example, WLF filed *amicus* briefs in *United States v. Carlton*, 114 S. Ct. 2018 (1994) (validity of retroactive changes in federal tax statute) and *U.S. Term Limits, Inc. v. Thornton* (Sup. Ct. No. 93-1456) (validity of state term limits for Members of Congress).

The twenty-three legislators joining this brief are members of California's delegation to the U.S. House of Representatives, the California Senate, and the California State Assembly who strongly support California's position in this case. Those legislators — United States Representatives Michael Huffington, Stephen Horn, and Richard Pombo; California Senators K. Maurice Johannessen, David Kelley, Newton Russe", Don Rogers, Bill Leonard, Phil Wyman, Tim Leslie, and Rob Hurtt; and California State Assembly Members Mickey Conroy, Richard K. Rainey, Dean Andal, Paula L. Boland, Richard L. Mountjoy, James Rogan, Bill Morrow, Bernie Richter, Bill Hoge, David Knowles, Trice Harvey, and Jan Goldsmith — believe that the ruling below unnecessarily and detrimentally limits the state's ability to carry out the budget cuts that have been made necessary by its fiscal crisis.

The motion of *amici* for leave to file their brief in support of the petition for certiorari was granted on October 3, 1994. *Amici* submit this brief in support of Petitioners with the written consent of both parties. Letters of consent have been lodged with the Clerk of this Court.

## SUMMARY OF ARGUMENT

The California statute at issue in this case, California Welfare and Institutions Code § 11450.03, was enacted in 1992 during a period of fiscal crisis in the state. The statute, a welfare reform measure, establishes a reduced level of benefits under the Aid to Families with Dependent Children (AFDC) program during the first twelve months of a recipient's residence in California. For most new residents, that level is the benefit level they would have received if they were still living in their former state.

The decision below, in declaring this measure a violation of equal protection, treated this measure essentially as if it were identical to the residency requirements considered in *Shapiro v. Thompson*, 394 U.S. 618 (1969). In that case, this Court struck down state and District of Columbia laws that prevented newcomers from receiving *any* assistance under the AFDC program for the first twelve months of residence in the state. But unlike the situation in *Shapiro*, in which this Court applied strict scrutiny on the basis that the programs amounted to a "penalty" on the right of interstate travel, California's denial of an *increase* in a newcomer's former benefit level is hardly a "penalty" on the newcomer's travel in any conventional sense.

Under the properly applicable standard of rational basis review, California's program is justified as a means of reducing welfare expenditures while allocating the reductions so that they fall in greater proportion on those who are relatively better able to absorb them. In comparison with established residents, who may have longstanding ties to a particular area, newcomers who are



welfare recipients can more easily adjust to cuts through such decisions as their choice of communities.

Further, even if the Constitution is held to require enhanced scrutiny of residency-based programs that states have established solely on their own authority, rational basis review should still apply when, as here, the state program has been approved by the U.S. Department of Health and Human Services pursuant to congressionally-delegated authority.

### ARGUMENT

#### I. CALIFORNIA'S RESIDENCY-BASED WELFARE BENEFIT LEVELS SHOULD NOT BE DEEMED A "PENALTY" UPON THE EXERCISE OF THE RIGHT TO INTERSTATE TRAVEL

In *Shapiro*, this Court struck down state and District of Columbia laws that prevented newcomers from receiving any assistance under the AFDC program for the first twelve months of residence. As this Court subsequently pointed out, however, the *Shapiro* decision did not announce an outright prohibition on all residency-based classifications:

Although any durational requirement impinges to some extent on the right to travel, the Court in *Shapiro* did not declare such requirements to be *per se* unconstitutional. The Court's holding was conditioned . . . by the caveat that some "waiting-period or residence requirements . . . may not be penalties upon the exercise of the constitutional

right of interstate travel." The amount of impact required to give rise to the compelling-state-interest test was not made clear.

*Memorial Hospital v. Maricopa County*, 415 U.S. 250, 256-57 (1974) (quoting *Shapiro*, 394 U.S. at 638 n.21).

The district court decision below, adopted by the Ninth Circuit, found California's residency-based benefit levels to be a "penalty" on the ground that they treat recent residents of California different from other California residents and involve "necessities of life." Pet. App. A14. Hence, the court held that strict scrutiny was applicable and that the classification could not be justified by the state's interest in "conserv[ing] limited State funds in the hope that the State may do more for those who now and in the past have depended on the State." Pet. App. A16.

Because § 11450.03 generally provides new residents the same AFDC benefits that they had been receiving before moving to California, however, the statute can hardly be said to "penalize" interstate migration in any normal sense of the word. Nor does the statute deny newcomers the exercise of a fundamental right, such as the right to vote. See *Dunn v. Blumstein*, 405 U.S. 330 (1972). The rational basis standard should therefore govern in this case.

The court below characterized the program as denying "the necessities of life" in part on the basis that it "makes no accommodation for the different costs of living that exist in different states." Pet. App. A13. But that is a feature of the federal AFDC program itself, which permits a state to set its benefit level at an amount less than the standard

of need it has calculated; under 42 U.S.C. § 602(a), a state is free to "pare down payments to accommodate budget realities by reducing the percentage of benefits paid or switching to a percent reduction system." *Rosado v. Wyman*, 397 U.S. 397, 413 (1970).

Thus, even a state with no residency-based benefit levels may "penalize" a newcomer or deny "necessities of life" in the sense of failing to set benefits at a level commensurate with the costs of living in his or her new state. But this Court has never indicated that such a failure implicates the right to travel or any other constitutional right.

The applicability of rational basis review to this case is even more clear in light of this Court's cases since *Shapiro* in which this Court has distinguished the imposition of a penalty upon the exercise of a constitutional right from the refusal to subsidize the exercise of a constitutional right. The "decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny." *Regan v. Taxation Without Representation of Washington*, 461 U.S. 540, 549 (1983). Here, California has not "regulated" the right to travel, but has, at most, "simply chosen not to pay" the costs associated with its exercise. *Id.* at 546.

Like the classification in the Food Stamp Act upheld by the Court in *Lyng v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America*, 485 U.S. 360 (1988), which denied food stamps to households of striking workers, California's classification "does not 'order or prevent' anyone from migrating to the state. *Id.* at 365 (citation omitted). The Court noted in *Lyng*, "Strikers and their union would be

much better off if food stamps were available, but the strikers' right of association does not require the Government to furnish funds to maximize the exercise of that right." *Id.* at 368.

## II. THE VALIDITY OF CALIFORNIA'S PROGRAM IS FURTHER SUPPORTED BY CONGRESSIONAL AUTHORIZATION

The Ninth Circuit's decision overturned not only the judgment of the California legislature that enacted the statute in 1992, but also that of HHS, which had approved it on October 29, 1992, under 42 U.S.C. § 1315(a), as an "experimental, pilot or demonstration project." Pet. 4-5. In approving the program, HHS was obliged to determine that § 11450.03 "is likely to assist in promoting the objectives of" the federal Aid to Families with Dependent Children program. § 1315(a).

Hence, even if California's program is held to be a "penalty" upon travel by indigents, the question is not the standard of review to be applied when a state establishes such a program on its own, but the standard of review to be applied when a state establishes such a program with federal authority. The existence of federal approval provides an independent reason for employing a deferential "rationality review" of the California legislature's adoption of residency-based benefit levels.

In *Shapiro*, the Court found that the Social Security Act contained no congressional approval for residency requirements. The Court further indicated, however, that such approval would be unavailing for the states in any event because "Congress is without power to enlist state cooperation in a joint federal-state program by legislation



which authorizes the States to violate the Equal Protection Clause." 394 U.S. at 641.

That analysis is truncated, and should be reconsidered by this Court. The Equal Protection Clause ordinarily requires only "rational basis" review of classifications in welfare measures. See *Dandridge v. Williams*, 391 U.S. 471 (1970). The asserted basis for enhanced scrutiny of residency requirements is not the Equal Protection Clause itself, but a right to travel based on some other constitutional guarantee. See *Shapiro*, 394 U.S. at 630 & n.8.

But as Justice Harlan pointed out in dissent, three of the provisions suggested as bases for that right — the Privileges and Immunities Clause of Art. IV, § 2, the Privileges and Immunities Clause of the Fourteenth Amendment, and the Commerce Clause — are inapplicable to Congress and can be overridden by Congress in their application to the states. See *Shapiro*, 394 U.S. at 666-67 (Harlan, J., dissenting). Moreover, as Chief Justice Warren indicated in dissent, the Commerce Clause, as an affirmative grant of power to Congress, provides ample authority for Congress to allow residence requirements by the states. See *Shapiro*, 394 U.S. at 651 (Warren, C.J., dissenting).

In the view of the *Shapiro* majority, it had "no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision." 394 U.S. at 630. At least where, as here, the contested provision of state law places only a burden upon interstate travel — if it does that much — and does not regulate anyone's travel into the state, the appropriate analytical

framework is that developed by this Court in deciding claims based on the "dormant" Commerce Clause.

"When Congress so chooses, state actions which it plainly authorizes are invulnerable to constitutional attack under the Commerce Clause." *Northeast Bancorp., Inc. v. Board of Governors of the Federal Reserve System*, 472 U.S. 159, 174 (1985). Federal regulations adopted pursuant to congressional authority can also authorize state actions that would otherwise violate the Commerce Clause. See *White v. Massachusetts Council of Construction Employers, Inc.*, 460 U.S. 204, 213-15 (1983).

Here, HHS has authorized § 11450.03 pursuant to a valid congressional delegation of power. As noted, HHS approved California's program under 42 U.S.C. § 1315, which allows a state, with federal approval, to undertake a demonstration project that is free from the federal statutory restrictions that normally limit the discretion of a state in structuring its AFDC program. Given the presence of federal administrative approval as a basis of authority for the program and as an independent check upon it, strict scrutiny is particularly inappropriate with regard to the "right to travel" claim presented in this case.

### III. THE CLASSIFICATION IN § 11450.03 IS JUSTIFIED BY THE DIFFERING RELIANCE INTERESTS OF LONGTIME RESIDENTS AND NEWCOMERS

The residency-based benefit levels adopted by California easily pass rational basis review. "In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against



equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *F.C.C. v. Beach Communications, Inc.*, 113 S. Ct. 2096, 2101 (1993).

Residency-based cuts in welfare have such a basis: They allocate cuts in benefits so that the cuts fall in greater proportion on those who can best shoulder them. In comparison with established residents of the state, who are more likely to have longstanding ties to a particular area, newcomers who are welfare recipients can more easily adjust to cuts through their choice of communities and lifestyles.

California has long been suffering under a budgetary crisis. In 1992, the year that § 11450.03 was enacted, the state was in such straits that it was forced to pay its employees with I.O.U.'s known as "registered warrants," which some banks refused to accept. See Michael Meyer, *California's Broke — But Who Will Fix It?*, Newsweek, Aug. 17, 1992, at 37. The state's financial problems have persisted to this day. See *California's Budget: IOU All Over Again?*, The Economist, July 2, 1994, at 24; George Graham, *California Faces A New Budget Crisis*, Financial Times, June 18, 1994, at 3.

The residency-based welfare benefit levels were expected to make a modest, but useful, contribution to the state's budgetary outlook. The record indicates that the district court's suspension of the implementation of § 11450.03 was predicted to "result in additional, unbudgeted state General Fund costs in the AFDC program of \$8.4 million in fiscal year 1992-93, and \$22.5 million in

fiscal year 1993-94."<sup>1</sup> (The AFDC benefit levels of longtime residents were also reduced in 1992 as part of a work incentive program that was later invalidated by the Ninth Circuit. See *Benó v. Shalala*, 30 F.3d 1057 (9th Cir. 1994)).

The court below found, without analysis, that new residents are "no better able to bear the loss of benefits than a group randomly drawn." Pet. App. A17. This conclusion has no apparent basis in the record, and "those attacking the rationality of the legislative classification have the burden 'to negative every conceivable basis which might support it.'" *Beach Communications*, 113 S. Ct. at 2102 (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)).

While recipients of public benefits do not, of course, have a constitutional right to continued receipt of their benefits at accustomed levels, a state's desire to respect expectation and reliance interests has repeatedly been recognized by this Court as a legitimate objective, although it necessarily discriminates against the interests of newcomers. See, e.g., *Nordlinger v. Hahn*, 112 S. Ct. 2326 (1992); *Heckler v. Mathews*, 465 U.S. 728, 746 (1984); *United States R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 178 (1980); *New Orleans v. Dukes*, 427 U.S. 297, 305 (1976).

In *Nordlinger*, the Court considered an amendment to the California Constitution that restricted any increases in the assessed value of real property to 2 percent each year.

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<sup>1</sup> Declaration of Dennis Hordyk, Assistant Director, California Dept. of Finance, Pet. App. A22.

112 S. Ct. at 2329. Sales of property triggered new assessments at market value. *Id.* Because real estate prices were escalating, the scheme forced newcomers to pay considerably higher real estate taxes than longtime owners. *Id.*

This Court, applying the rational basis standard, cited two grounds sufficient to uphold the classification: the state's interest "in local neighborhood preservation, continuity, and stability," and the fact that "a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner." *Id.* at 2333. Here, as in *Nordlinger*, the State may have thought established residents hold greater "vested expectations" in their level of AFDC benefits and in the lifestyle, however modest, that they have been able to finance with those benefits for their children. Moreover, a prospective new resident "has full information" about the reduced benefits when he or she moves into the state, and can consider them in deciding whether to move. *Id.*<sup>2</sup> These legitimate, non-invidious reasons for the distinction are sufficient to justify it.

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<sup>2</sup> The district court referred to evidence that some supporters of the program regarded it as a means of deterring migration into the state, and indicated that "this may be the purpose," but the court properly declined to make any such factual finding. Pet. App. A15. In the absence of such a finding, at least, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Beach Communications*, 113 S. Ct. at 2102.

## CONCLUSION

For the foregoing reasons, the judgment of the court below should be reversed.

Respectfully submitted,

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Date: November 16, 1994

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No. 94-197

Supreme Court, U.S.  
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In The  
**Supreme Court of the United States**

October Term, 1994

◆  
ELOISE ANDERSON, individually and in her official  
capacity as Director, California Department of Social  
Services; CALIFORNIA DEPARTMENT OF SOCIAL  
SERVICES; and RUSSELL S. GOULD, Director,  
California Department of Finance,

*Petitioners,*

v.

DESHAWN GREEN, DERBY VENTURELLA, and  
DIANA P. BERTOLTT, on behalf of themselves and all  
others similarly situated,

*Respondents.*

◆  
On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit  
◆

◆  
**BRIEF AMICUS CURIAE OF  
MOUNTAIN STATES LEGAL FOUNDATION,  
THE HOWARD JARVIS TAXPAYERS ASSOCIATION,  
AND THE ALLIANCE FOR AMERICA  
IN SUPPORT OF PETITIONERS**  
◆

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# **BRIEF AMICUS CURIAE OF MOUNTAIN STATES LEGAL FOUNDATION, THE HOWARD JARVIS TAX- PAYERS ASSOCIATION, AND THE ALLIANCE FOR AMERICA IN SUPPORT OF PETITIONERS**

## **IDENTITIES AND INTERESTS OF AMICI CURIAE**

Pursuant to Supreme Court Rule 37, Mountain States Legal Foundation, the Howard Jarvis Taxpayers Association, and the Alliance For America respectfully submit this brief *amicus curiae* in support of Petitioners. Written consent to the filing of this brief has been granted by counsel for all parties. Copies of the letters of consent have been filed with the Clerk of this Court.

*Amicus* Mountain States Legal Foundation ("MSLF") is a non-profit, membership, public interest law foundation dedicated to bringing before the courts those issues vital to the defense and preservation of the individual liberties enumerated in the United States Constitution, the right to own and use property, limited government and the free enterprise system. MSLF members include businesses and individuals who live and work in nearly every state of the country. A large number of the Foundations' members are California residents and taxpayers and share an interest on behalf of MSLF in the stability and reform of the California welfare system. Further, MSLF has participated before this court in numerous cases involving issues arising under the Fifth and Fourteenth Amendments to the United States Constitution, including *Adarand Constructors, Inc., v. Peña*, No. 93-1841, *certiorari* granted September 26, 1994.

*Amicus* Howard Jarvis Taxpayers Association ("HJTA") is a non-profit corporation organized under the



laws of the State of California. HJTA is comprised of some 200,000 California taxpayers and is organized for the purpose of advocating the reduction of taxes, including real property taxes and special taxes in all their myriad forms and mutations levied upon and paid by California citizens. HJTA is involved in civil litigation on behalf of its members and all California taxpayers to achieve its tax reductions goals.

*Amicus* Alliance For America is a fifty state network of nearly five hundred independent grassroots organizations, whose collective membership numbers in the millions. These groups represent a variety of vocational, cultural, and political interests including farming, grazing, forestry, commercial fishing, mining, recreation, energy, animal welfare, private property protection, local government and various community and regional organizations. The Alliance believes that it is crucial to preserve independent state decision making, such as at issue in this case, in order to encourage states to explore new approaches to governmental problems.

*Amici* submit this brief because they believe their public policy perspective and litigation experience will provide an additional viewpoint with respect to the constitutional issues presented. By urging this Court to allow state governments to engage in creative regulatory techniques, *amici* are not advocating giving government a free hand at the expense of the enumerated Constitutional rights of the individuals. Rather, *amici* contend that the "unenumerated" rights revolution, as espoused by the lower court's herein, is having a major deleterious impact

on the self-determination and well-being of the states and their citizenry.

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### OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported as *Green v. Anderson*, \_\_\_ F.3d \_\_\_ (9th Cir. 1994). The order of the District Court granting Respondents' motion for preliminary injunction is reported at 811 F. Supp. 516 (E.D. Cal. 1993).

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### STATEMENT OF THE CASE

The California State Legislature enacted a non-discriminatory statute that created a two-tiered welfare payment system which provides the same level of benefits to a new resident as received in the state from which he or she moved, for a limited time. Welfare and Institutions § 11450.03. California's statute neither penalizes the right of others to freely move interstate, nor denies them public assistance for any period of time. In the District Court, California aptly demonstrated the nature of the current economic crisis which it faces, to support a finding that a compelling governmental interest exists to allow such non-drastic efforts to alleviate the severe economic pressure on the State's budget.

Yet, the District Court and the United States Court of Appeals for the Ninth Circuit never allowed the statute to take effect because the lower courts believed this Court's decision in *Shapiro v. Thompson*, 394 U.S. 618 (1969) means

that *any* differential treatment of welfare recipients based on length of state residency necessarily penalizes travel and, as such, cannot be justified by state budgetary concerns.

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### SUMMARY OF ARGUMENT

California's statute places such a minimal imposition on interstate travelers as to have an inconsequential impact on the constitutional right to travel. The Appellate Court's ruling herein so impugns California's sovereignty as to violate the Tenth Amendment to the United States Constitution.

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### ARGUMENT

#### I. THE STATE OF CALIFORNIA MUST BE ALLOWED TO PURSUE INNOVATIVE, NON-DISCRIMINATORY SOLUTIONS TO WELFARE REFORM

*Amici* submit that the right Respondents seek to enforce before this Court is not the constitutional right to interstate travel as they claim, but rather a "right" to pursue as high a welfare payment as possible. This case presents the Court with an opportunity to deal with an issue of exceptional constitutional importance: Is this "unenumerated" constitutional right to be so expanded as to impose imminent economic danger to state government by destroying its ability to manage public institutions for the benefit of all its citizens, even when the state

action is substantively neutral in its effect on the right to travel?

The constitutional right to travel from one state to another, and necessarily to use the highways and other instrumentalities of interstate commerce in so doing, occupies a position fundamental to the concept of our Federal Union. The Founding Fathers envisioned a national economic entity and this Court has given life to that vision. See *H.P. Hood and Sons v. Dumond*, 336, U.S. 525 (1949):

Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his exports, and no foreign state will by customs duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality.

*Dennis v. Higgins*, 498 U.S. 439, 449-50 (1991) (quoting *H.P. Hood & Sons, Inc.*, *supra*, 539). Our economic system depends upon the free flow of *commerce* among the states.

Importantly, states have not been prevented entirely from regulating interstate commerce.

States may regulate interstate commerce even-handedly to effectuate a local public interest and . . . [the] effects on interstate commerce are only incidental . . . unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. . . . If a



legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it would be promoted as well with a lesser impact on interstate activities.

*Hughes v. Oklahoma*, 441 U.S. 322, 331 (1979), citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Amici submit that this case bears no relationship to the constitutional principles of comity and cooperation that underlie the Commerce Clause or the right to freely travel amongst the states. It has less to do with any attempted economic balkanization by California than with an effort by Respondents to seek a fundamental right to a higher welfare payment. The Constitution does not grant any person such an unfettered right, nor can Respondents cite the Court to any authority for such a proposition.

The Constitutional basis of the right to travel has never been fixed by this Court, but the right has been inferred to arise out of the Privileges and Immunities Clause, U.S. Const. Art. IV, § 2, The Fourteenth Amendment, Section a, U.S. Const. Amend. XIV, § (a), or the Commerce Clause, U.S. Const. Art. I, § 8(3). See *Atty Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 106 S.Ct. 2317, 2320 (1986).<sup>1</sup> Historically, abridgement of the constitutional

<sup>1</sup> Further, the Articles of Confederation had explicitly provided that "the people of each State shall have free ingress and egress to and from any other State." Art. IV, Articles of Confederation. However, the United States Constitution nowhere uses the phrase "right to travel." Similarly, this Court has never seen fit to elucidate and resolve the "recurring differences in

right to travel has involved attempts by state governments to solve a perceived social ill by limiting the right of citizens to traverse the state's boundaries, and withholding full rights of state residency to them once they cross the state's boundary.<sup>2</sup>

However, the Court has upheld certain state actions despite their incidental impacts upon the right to travel. See, *Bray v. Alexandria Women's Health Clinic*, 506 U.S. \_\_\_, 113 S.Ct. 753 (1993) (an anti-abortion organization's actions which had the effect of impeding or obstructing

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emphasis within the [United States Supreme] Court as to the source of the constitutional right to interstate travel." *United States v. Guest*, 383 U.S. 745, 759. (See also *Shapiro v. Thompson*, *supra* at 630).

<sup>2</sup> This Court has struck down attempts by various states to give preferred treatment to their denizens of longer residence, *Zobel v. Williams*, 457 U.S. 55 (1982) (Alaska attempted to grant its long-term residents unequally large shares of royalties paid to the state for natural resources withdrawn from Alaska); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (Connecticut attempted to deny welfare assistance to persons who have met residence requirements applicable in other contexts and all other eligibility requirements, but had not resided within the state for at least one year); and *United States v. Guest*, 383 U.S. 745 (1966) (Georgia attempted to restrict persons on the basis of their race from freely engaging in interstate travel and equally enjoying privately owned places of public accommodation); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974) (Arizona's one year county residency requirement for an indigent to receive nonemergency hospitalization or medical care at county expense operates to penalize indigents from exercising their constitutional right of interstate migration and must be justified by a compelling state interest.)



entrances and exits of a Virginia abortion services facilities were not a constitutional violation because the incidental effects from such demonstrations did not have the primary effect of depriving women of their right to interstate travel); *Nordlinger v. Hahn*, \_\_\_ U.S. \_\_\_, 112 S.Ct. 2326 (1992) (California's property tax system under which assessed value could increase at rate which was differential to realty owners did not violate a property owner's right to travel because any benefit was found to be merely incidental to an acquisition-value approach to taxation).

Thus, if impacts from government regulation of a person's right to travel are merely incidental to some other legitimate governmental activity, then review should center on whether there is a valid, plausible reason for the action. *Nordlinger, supra*, at 2332. In the present case, California's statute was carefully crafted to avoid a scheme that would operate as a penalty on interstate migration, and thus imposes no burden on the right to travel. The Statute is substantively neutral in its effect on the constitutionally-protected right to travel.

California's statute does not provide for an outright denial of eligibility for benefits such as that condemned in *Shapiro*, but instead is more akin to the residence requirement imposed by states on new residents wanting to qualify for in-state tuition, which this Court has upheld. *Vlandis v. Kline*, 412 U.S. 441, 453 (1973); *Starns v. Malkerson*, 326 F.Supp. 234 (D.Minn. 1970), *aff'd on*

appeal, 401 U.S. 985 (1971).<sup>3</sup> The statute achieves its purpose of reducing state expenditures by temporarily limiting the level of welfare benefits to those who choose to move to California. As noted above, the statute does not prevent people from moving to California; it simply renders neutral, for a period of one year, one of the factors a person might consider when contemplating a move to California.<sup>4</sup>

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<sup>3</sup> In his dissent in *Memorial Hospital v. Maricopa County*, Justice Rehnquist raised the following concern:

Since the Court concedes that 'some waiting period(s) . . . may not be penalties: one would expect to learn from the opinion [how] to distinguish a waiting period which is a penalty from one which is not. Any expense imposed on citizens crossing state lines, but not on those staying put, could theoretically be deemed a penalty of travel; the toll exacted from persons crossing from Delaware to New Jersey by the Delaware Memorial Bridge is a 'penalty' on interstate travel in the most literal sense of all. But such charges, as well as other fees for use of transportation facilities, such as taxes on airport users, have been upheld by this Court. It seems to me that the line to be derived from our prior cases is that some financial impositions on inter-state travelers have such indirect or inconsequential impact on travel, that they simply do not constitute the type of direct purposeful barriers struck down in *Edwards* and *Shapiro*. Where the impact is remote, the state can reasonably require that citizen bears some proportion of the State's costs in its facilities.

*Memorial Hospital v. Maricopa County*, 415 U.S. 250 at 284. See also Justice Harlan's dissent in *Shapiro v. Thompson*, 394 U.S. 618 at 661 (1969).

<sup>4</sup> It is generally concluded that one looks at the equal protection clause for enforcement of the right to travel. Killian, J.

No facts in the present case can give rise to even a suggestion that California is motivated by discrimination against out-of-state citizens. Neither in intent, nor in effect, does California's statute prohibit travelers from reaching California. As this Court held in the *Bray* case:

But all that [abortion clinics and abortion organizations] can point to by way of connecting [antiabortion] groups with that particular right is the District Court's finding that '[s]ubstantial numbers of women seeking the services of [abortion] clinics in the Washington Metropolitan area travel interstate to reach clinics.' . . . *That is not enough.*

*Id.* (Internal citations omitted, emphasis added.) The Court reasons further that in considering whether there has been interference with the right to travel, it is necessary to judge the primary objective of the interfering actions. "[I]f the predominate purpose . . . is to impede or prevent the exercise of the right of interstate travel, or to oppress a person because of his exercise of that right," then the interference becomes a proper object of remedy under federal law. *Id.*, citing *United States v. Guest*, 383 U.S. 745, 760 (1966). This instruction is applicable to the present case.

In light of the budget crisis the State faces, California has undertaken good faith efforts to craft a scheme that

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Ed., *The Constitution of the United States of America, Analysis and Interpretations*, 1987, p. 1796 n. 5. "In reality, right to travel analysis refers to little more than a particular application of equal protection terms, state distinctions between newcomers and longer term residents." *Zobel v. Williams*, *supra* at 60, n. 6. See also, *Shapiro v. Thompson*, *supra*, at 633.

does not operate as a penalty on migration. Impetus for the statute came from the existence of continuing, severe economic and fiscal problems in California and the California Constitutional provision mandating a balanced budget. California Constitution, Article IV, Section 12(a). If these efforts have had the concomitant result of making travel to California more onerous, this result is merely an incidental impact of the kind analyzed in the *Bray* and *Nordlinger* cases, *supra*.

## II. THE APPELLATE COURT'S DECISION IMPUGNS CALIFORNIA'S SOVEREIGNTY

The decision of the Court of Appeals herein, impugns the meaningful existence of state sovereignty, as enshrined in the Tenth Amendment. This becomes especially clear when the genesis of that amendment is reviewed. During the debate over the ratification of our Constitution, there was great concern that the new national government (including the judicial branch) would subsume the sovereignty of the individual states. An overly large and powerful national government, it was feared, would remove the people from direct participation in democratic government, which would ultimately have the potential for tyranny. For example, Brutus feared that

it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way.



Brutus, *Essay I* (October 18, 1787), from *The Anti-Federalist*, § 2.9.9 at 112.

Aware of this trepidation, James Madison tried to reassure the citizens of New York, repeatedly, in *The Federalist Papers*. For example, in *The Federalist No. 39*, he wrote that the new government's

jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects.

*The Federalist No. 39* (January 16, 1788) at 194 (J. Madison) (Bantam Ed. 1982). As to the fear that the people would actually prefer the federal government, to the detriment of local authority, Madison wrote:

But even in that case, the State governments could have little to apprehend, because it is only within a certain sphere, that the federal power can, in the nature of things, be advantageously administered.

*The Federalist No. 46* (January 29, 1788) at 239 (J. Madison).

Because eight states ratified the Constitution with recommendations for further amendments, there was a strong impetus for a quick passage of a bill of rights. In 1791, the first ten amendments were ratified by the states, including the Tenth Amendment:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

There is no question of the critical importance attached by the ratifiers of the Constitution to incorporating the protection of the Tenth Amendment. Now that the Tenth Amendment is enshrined in the Constitution, this Court is faced with the question of whether and how to apply it. It is not and never has been expected that the federal government, including the judiciary, would attempt to negate state sovereignty overnight. Over the years, however, there has been a trend to compromise, or minimize, the force of the Tenth Amendment in the face of serious short-term expediency.

This Court's expatiation on the Tenth Amendment found in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1986) has often been viewed as having cut back on the force of the Tenth Amendment. When writing the majority opinion in *Garcia*, Justice Blackmun was persuaded that many of the tests employed by previous courts for discerning the essential elements of state sovereignty were fundamentally flawed and could only lead to inconsistent results that lacked a guiding principle. The error with each of these tests, Justice Blackmun noted, is that because state governments have the legitimate ability to experiment in

any activity that their citizens choose for the common weal. . . . Any rule of state immunity that looks to the 'traditional,' 'integral,' or 'necessary,' nature of governmental functions inevitably invites an unelected federal judiciary to make decisions about which state policies it favors and which ones it dislikes.

*Garcia*, 469 U.S. at 546.



Rather than looking at governmental functions, the Court focused on

principles of democratic self-governance. . . . If there are limits on the federal Government's power to interfere with state functions – *as undoubtedly there are* – we must look elsewhere to find them.

*Garcia* 469 U.S. at 547 (emphasis added).

The courts below concluded that under the principles established by *Shapiro*, even if the non-discriminatory purpose of California's statute was to " . . . conserve limited state funds in the hope that the state may do more for those who now and in the past have depended on the state, such a purpose, if laudable, is yet unconstitutional." (District Court Order, Petitioner's App. at 16.) As stated previously, California met its burden of demonstrating that the statute was necessary to achieve an overriding purpose to control government spending during an era of severe economic depression. See *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 284 (1974) (Rehnquist, J. dissenting.) Nevertheless, the court herein below substituted judicial surmise for legislative fact-finding and engaged in nothing less than the abdication of meaningful judicial review of a statute that only incidentally impacts the Constitutional aspects of interstate travel. The courts below have taken away from the citizens of California their right to hold elected officials

accountable not only for the state's welfare system, but for its economic stability as well.<sup>5</sup>

In this case, the unprecedented intrusion of the federal judiciary into local government and lawmaking in California represents an "extraordinary defect[] in the national political process." *State of South Carolina v. Baker*, 485 U.S. 505, 99 L.Ed.2d 592, 603 (1988). This is truly a regrettable consequence for a constitutional system which has catalogued the many benefits of federalism as including, *inter alia*, "a decentralized government that will be more sensitive to the diverse needs of a heterogenous society," the "increase[d] opportunity for citizen involvement in democratic processes" and the "allow[ance] for more innovation and experimentation in government." *Gregory v. Ashcroft*, 501 U.S. \_\_\_, 111 S.Ct. 2395, 2399 (1991) (citations omitted) Such a defective decision must be overturned.

### III. THE APPELLATE COURT'S DECISION ADVERSELY IMPACTS OUR "REPUBLICAN FORM OF GOVERNMENT" AND THEREBY IMPLIEDLY VIOLATES THE TENTH AMENDMENT

*Amici* submit that another way of looking at the "structure" of federalism is through a comparison with

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<sup>5</sup> In addition, the language of the Tenth Amendment protects not only the states, but the people: "The powers not delegated to the United States by the Constitution, . . . are reserved to the States respectively, or to the people." The rights of the people, as protected in their state constitutions, have been violated as well. Internal affairs of the states are to be protected from usurpation. *Kansas v. Colorado*, 206 U.S. 46, 49 (1906).

republicanism. Professor Lawrence Tribe has suggested that the Tenth Amendment's protection of state sovereignty can be conceptualized through reliance on the Constitution's guarantee of a republican form of government. L. Tribe, *American Constitutional Law* at 398. To put it simply, Article IV, Section 4, provides that the "United States shall guarantee to every State in this Union a republican form of government." Tribe argues that:

[i]f the courts are once again to take up the task of preserving for states their constitutionally essential role as self-governing polities, the guaranty clause might well provide the most felicitous textual home for that enterprise.

L. Tribe, *American Constitutional Law* at 398.

In determining what is meant by a republican form of government, it is helpful to look at the writings of James Madison. Madison was a champion of the cause of a federal republic. He saw the new union as being a republic which was partly federal and partly national in character. In *The Federalist No. 10*, Madison argued that a large confederate republic is superior to small independent states in fighting factionalism and the tyranny of the majority. Madison also recognized, however, the crucial importance of retaining a *federal* rather than a wholly *national* character in the new union. In *The Federalist No. 39*, he criticized the concept of a purely national government and the "extent of its powers." *The Federalist No. 39* (January 16, 1788) 194 (J. Madison) (emphasis in original). In a purely national government, he cautioned, "local authorities are subordinate to the supreme; and may be controlled, directed or abolished by it at pleasure." *Id.* To avoid this possibility, the union is structured so that the

local governments – the states – retain "a residuary and inviolable sovereignty over all other objects." *Id.*

States have long functioned as the governmental units most directly affecting the lives of individuals. *Amici* submit that a crucial reason for preserving independent state decision-making is to encourage states to explore new approaches to governmental problems. As noted by Justice Brandeis in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (dissenting opinion):

It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.

Independent innovation is particularly necessary in the case of government regulatory activities, such as public assistance regulation, because state experimentation can hasten the development of successful regulatory techniques. In this case California has merely made an attempt at welfare reform which is neutral in its impact on the constitutionally protected right to travel.

#### IV. THE PRINCIPLE THIS COURT ENUNCIATED IN *SHAPIRO* IS UNWORKABLE AND SHOULD BE MODIFIED

If *Shapiro* and its progeny compel invalidation of California's Statute, then those principles should be reconsidered. As this Court said in *United States v. Dixon*, \_\_\_ U.S. \_\_\_, 113 S.Ct. 2849, 2864 (1993):



[W]hen governing decisions are unworkable or badly reasoned, 'this Court has never felt constrained to follow precedent.'

(quoting *Payne v. Tennessee*, 501 U.S. \_\_\_, 111 S. Ct. 2597, 2600 (1991). See also *Thornburg v. American College of Obstetricians & Gynecologists*, 476 U.S. 747 (1986) (White, J., dissenting):

It is essential that this Court maintain the power to restore authority to its proper possessors by correcting constitutional decisions that, on reconsideration, are found to be mistaken. The Court has therefore, adhered to the rule that *stare decisis* is not rigidly applied in cases involving constitutional issues . . . and has not hesitated to overrule decisions, or even whole lines of cases, where experience, scholarship, and reflection demonstrated that their fundamental premises were not to be found in the Constitution.

*Id.* at 786-88.<sup>6</sup>

The result of the District Court and the Ninth Circuit opinions following *Shapiro* and its progeny is that California is precluded from arguing legitimate budgetary concerns as a sufficient state interest to sustain a nondiscriminatory, durational residency requirement relating to public assistance expenditures. California has

<sup>6</sup> See also, *Brown v. Board of Education*, 347 U.S. 483 (1954), overruling *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Erie R.R. v. Thompkins*, 304 U.S. 64 (1938), overruling *Swift v. Tyson*, 41 U.S. (16 Pet.) 1 (1842). Cf. *Graves v. New York*, 306 U.S. 466, 491-92 (1938) (Frankfurter, J., concurring) (stating that "[t]he ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.").

made an attempt at welfare reform that is merely neutral in its impact on the right to travel. In light of the inflexibility *Shapiro* mandates towards legitimate state interests, the principles of *Shapiro* are unworkable and should be reconsidered.

Thus, this Court should reexamine whether some impositions on interstate travelers have such an indirect or inconsequential impact on travel that they simply do not constitute the type of direct, purposeful barriers to travel that justify bankrupting a state government charged with providing services to all of its residents.

## CONCLUSION

California is mandated to provide services to all of its residents. These services include public education, the state judicial system, the state highway system, medical services, the correctional system, fire and police protection, and a licensing system that regulates many important privately provided goods and services. All of these important governmental services are competing for limited financial resources. The action by the State of California under Welfare and Institutions § 11450.03 in this instance is substantively neutral in its effect on the constitutionally protected right to travel. *Amici* submit that this Court must restore the right of the People to hold elected officials accountable for the State's welfare system. Without such action, Government, its employees and those it



serves will suffer as the judicially created fiscal crisis over funding of the welfare system continues.

Respectfully submitted,

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In The  
**Supreme Court of the United States**  
October Term, 1994

◆  
ELOISE ANDERSON, INDIVIDUALLY AND IN HER  
OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
AND RUSSELL S. GOULD, DIRECTOR,  
CALIFORNIA DEPARTMENT OF FINANCE,

*Petitioners,*

v.

DESHAWN GREEN, DEBBY VENTURELLA, AND  
DIANA P. BERTOLTI, ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

◆  
On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit  
◆

AMICUS CURIAE BRIEF FOR THE STATES OF  
MINNESOTA, FLORIDA, HAWAII, AND  
PENNSYLVANIA IN SUPPORT OF PETITIONERS  
◆

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**QUESTION PRESENTED**

May a state limit a new state resident's benefits under its Aid To Families With Dependent Children ("AFDC") Program to the level of benefits received or receivable in the person's state of prior residence for a period of one year, with full benefits to be provided thereafter?

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AMICUS CURIAE BRIEF FOR THE STATES OF  
 MINNESOTA, FLORIDA, HAWAII, AND  
 PENNSYLVANIA IN SUPPORT OF PETITIONERS

**INTEREST OF THE AMICI STATES**

The Amici States, like every other state, must deal with an increasing number of difficult problems and limited financial resources. States' attempts to meet the



needs of their citizens are severely restricted by the interpretations lower courts have placed on this Court's right-to-travel decisions. The Amici have a substantial interest in ensuring that this Court does not apply the right-to-travel in a manner which unduly limits states' options to deal with financial crises and meet the needs of their citizens.<sup>1</sup>

On August 6, 1993, the Minnesota Supreme Court struck down as a violation of the right-to-travel and equal protection, a Minnesota statute similar to the California statute now before this Court. *Mitchell v. Steffen*, 504 N.W.2d 198 (Minn. 1993). The Minnesota statute provided a reduced level of General Assistance and Work Readiness benefits to individuals who had lived in the state for less than six months. *Id.* The statute was enacted to help eliminate a \$1.2 billion state budget deficit. The reduced benefit was based on benefit levels in the recipient's previous state of residence, subject to a floor of 60 percent of the usual Minnesota benefit. *Id.* In invalidating the statute, the Minnesota Supreme Court stated that it was constrained to follow U.S. Supreme Court precedent and strike down the law. *Id.* at 203. Minnesota sought review by this Court; its petition for certiorari was denied on January 18, 1994. *Mitchell v. Steffen*, 114 S. Ct. 902 (1994).

Efforts by states to address complex social problems with new, innovative approaches must not be hindered by an unnecessarily restrictive view of the right-to-travel.

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<sup>1</sup> The Amici States file this brief amicus curiae pursuant to Supreme Court Rule 37.5 which provides for filing such a brief without consent of the parties.

Where, as here, and in Minnesota, the residency requirements do not preclude benefits but only limit the incentive to move to obtain access to the state's resources, the courts should uphold the requirements as reasonable and prudent. The amici request this Court to clarify that such balanced approaches by the states, to neutralize the influence of welfare benefits in the decision to move, do not unduly restrict the right of citizens to migrate freely from state to state.

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### SUMMARY OF ARGUMENT

Both the Ninth Circuit Court of Appeals and the District Court misinterpreted the principles this Court announced in *Shapiro v. Thompson*, 394 U.S. 618 (1969) and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974). They mistakenly found that the cases prohibited any kind of differential treatment of new residents in the absence of a compelling state interest. The Amici agree with California's position that the decisions of this Court do not justify an absolute ban on durational residency requirements in the public assistance field. Moreover, even if *Shapiro* and its progeny do outlaw durational residency requirements, those cases should be overturned in favor of a more realistic and workable standard which will not tie states' hands and which will allow states the flexibility they need to creatively meet the needs of their residents.

The right-to-travel, as interpreted by lower courts, has significantly hindered states in their attempts to deal with the problems they face. It has led states to eliminate programs or cut benefits they offer to their residents.

Limiting the options among which states can choose discourages innovation and harms individuals who could truly benefit from assistance programs.

Allowing welfare benefits to be a neutral factor in one's decision to move to a new state is constitutionally valid. It neither penalizes an individual for moving to a new state, nor denies benefits to individuals who have moved into the state. It instead guarantees that individuals will receive the same amount of assistance they received in their former state of residence, up to their new state's standard of need. States should be allowed to provide a lower initial benefit to new arrivals in a way which does not discourage movement among the states, instead of being forced to take the Draconian measures of reducing all grants, eliminating programs or foregoing program improvements.

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#### ARGUMENT

**LIMITED DURATIONAL RESIDENCY REQUIREMENTS, WHICH MAKE WELFARE BENEFITS A NEUTRAL FACTOR IN THE DECISION OF INDIGENT INDIVIDUALS TO MIGRATE, DO NOT VIOLATE THE RIGHT-TO-TRAVEL OR EQUAL PROTECTION.**

California's two-tier benefit statute is valid. It violates neither the right-to-travel nor equal protection. The Ninth Circuit Court of Appeals and District Court erroneously interpreted *Shapiro v. Thompson*, 394 U.S. 618 (1969), and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974), as mandating a complete ban on durational residency requirements in the public assistance field. An

absolute ban on durational residency requirements is neither mandated nor justified based on the principles underlying those cases. Moreover, the need for states to pursue creative solutions to the problem of allocating scarce welfare resources warrants this Court's further guidance on those cases.

California's statute creating a two-tier AFDC benefit structure is significantly different from the statutes invalidated in *Shapiro* and *Memorial Hospital*. California's AFDC payment structure makes welfare benefits a neutral factor in the decision of a family to move to that state; it does not impose a penalty on travel and thus does not impinge the right-to-travel. Because it meets the rational basis test, it does not violate the Equal Protection Clause of the United States Constitution.

**A. The Lower Court's Decision Severely Limits The Ability Of States To Effectively Deal With The Numerous Problems They Face, And To Institute Programs That Are More Generous Or More Innovative Than Those of Neighboring States.**

One of the unique facets of our nation is the ability of the states to test new ideas, to experiment and discover different ways of solving problems. *Reeves, Inc. v. Stake*, 447 U.S. 429, 441 (1980) (quoting *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)). The ability of states to creatively deal with the myriad of problems they face and find effective solutions to those problems is greatly constrained by the interpretation lower courts have placed on this Court's right-to-travel decisions. As society's problems become more



complex, states find that they are increasingly handicapped by the perception of lower courts that any disparate treatment of new residents is constitutionally impermissible. This interpretation has placed the states in a constitutional straitjacket and made it more difficult for states to deal effectively with the problems of needy individuals living within their borders.

When the Minnesota Legislature enacted the law struck down in *Mitchell*, it faced a \$1.2 billion deficit. State welfare programs had to absorb a \$200 million budget reduction. *Mitchell v. Steffen*, 487 N.W.2d 896, 899 (Minn. Ct. App. 1992). Numerous options were considered by the State as it faced the difficult task of allocating substantially fewer resources among its neediest residents. Among the options considered was the total elimination of some welfare programs, an option other states had already implemented. See, e.g., *Saxon v. Department of Social Services*, 479 N.W.2d 361 (Mich. Ct. App. 1991). Eliminating programs would have treated all Minnesota residents alike, but it could hardly be said to have benefited the poor. To avoid this drastic alternative, Minnesota adopted less Draconian measures which included a multi-level payment structure in its General Assistance and Work Readiness programs.

Minnesota and California were not alone in facing fiscal crises and being forced to make difficult allocations of scarce welfare resources.

In 1992, many states faced a third consecutive year of severe fiscal distress. Thirty-five states that had enacted balanced budgets for 1992 faced deficits in these budgets because revenues lagged behind projections, expenditures were

higher than anticipated, or both. These states, many of which had reduced spending or raised taxes in their initial budgets, made substantial mid-year spending cuts to restore their budgets to balance. In addition, in preparing their budgets for fiscal year 1993, which in most states began in July 1992, the majority of states again faced significant gaps between needed spending and available revenues. Many instituted another round of large program reductions.

Iris Lav, et al., Center on Budget and Policy Priorities and Center for the Study of the States, *The States and the Poor, Budget Decisions Hurt Low Income People in 1992* (1993).

A number of states adopted multi-level benefit laws as a means of addressing welfare caseloads in the wake of tight state budgets. See, e.g., Wisc. Stat. § 49.19(11m) (Supp. 1992), Ill. Ann. Stat. ch. 305, § 5/11-30 (Smith-Hurd 1993); N.Y. Soc. Serv. § 158(f) (1992). Three of these laws, including the California law at issue here, were overturned as violative of the federal constitutional right-to-travel or equal protection. *Mitchell*, 504 N.W.2d 198 (Minn. 1993); *Aumick v. Bane*, 161 Misc.2d 271, 612 N.Y.S.2d 766 (1994). Prohibiting states from providing limited benefits to new arrivals forces states to take the more drastic and punitive measures of eliminating programs entirely or reducing benefits for all. It also encourages states to simply refuse to address problems of poverty, since any effort to improve the lives of current residents may induce others to move into the state, thereby making the costs of such programs prohibitively expensive.



Limiting state options in the area of welfare spending is risky. As Justice Brandeis recognized 62 years ago:

To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.

*New State Ice Co.*, 285 U.S. at 311 (1932) (Brandeis, J. dissenting). As states continue to face limited resources and ever increasing demands, difficult choices must be made. The ability to experiment with various solutions is critical.

A state is not required to provide any type of welfare benefits to its residents. *Dandridge v. Williams*, 397 U.S. 471 (1970). As the costs of welfare programs rise, states must decide whether to continue to provide such programs, cut benefits or limit eligibility. A state which sees its neighboring states eliminate or substantially reduce their welfare programs is placed in a difficult position. It can, like its neighbors, also eliminate or reduce its programs. Should the state decide, however, to maintain its programs and benefit levels, it risks becoming a magnet for needy individuals who can no longer obtain benefits in the neighboring states. As the state's welfare caseload increases, its programs become increasingly more expensive to fund. States should have a means of maintaining

their current programs without becoming welfare magnets for their regions. Rather than taking the more harmful steps of cutting benefits to all or eliminating programs altogether, states should be allowed to provide limited benefits to certain groups for reasonable periods of time. As explained below, residency requirements which are of limited duration, and which limit initial benefits to the amount payable in the last state of residence, do not impede the right-to-travel nor violate equal protection guarantees. The requirements, however, do provide states with an important tool to meet the needs of their citizens and operate within budgetary constraints.

In addition to limiting the states' options for allocating their resources in existing programs, lower court interpretations of the right-to-travel case law inhibit states from creating new programs to aid their residents and deal with today's increasingly complex problems. A state's welfare programs impact migration into the state. Peterson, et al., *Welfare Magnets* (The Brookings Institute, 1990), p. 58. "High welfare benefits provide incentives both for the poor to remain in the state and for the poor in other states to move there." *Id.* at 20. A state wanting to experiment with welfare or health care reform will be discouraged from acting if it must immediately open the program, not only to current residents, but to all individuals desiring the services who move to the state for that purpose. A state wanting to enact universal health care, for instance, may hesitate if it perceives that individuals without health coverage who need care will move to the state to participate in the program. Similarly a state wanting to reform its welfare programs may decide it would

be too costly if individuals from states with less innovative programs would be attracted to the state.

If state experimentations in these areas disappear, any reform efforts could only be undertaken at the national level. Such a result is contrary to our long standing tradition of federalism and state experimentation. It also penalizes states that try to creatively address the problems they face. Requiring states to immediately provide their innovative programs to all newcomers makes cost containment difficult, if not impossible, and amounts to a substantial disincentive for states to provide more than lowest-common-denominator services.

By allowing states to provide a lower level of benefits for a reasonable period of time to new arrivals, states will be more likely to try bold and creative measures to address the problems their residents face. States will be more inclined to expend the resources and effort necessary to develop and implement new programs if they have the flexibility to control the costs of the programs.

As Justice Coyne of the Minnesota Supreme Court stated in her *Mitchell* concurrence, "At a time when most states are struggling to remain solvent, I can see no earthly reason for limiting a state's option to the total discontinuance of general assistance or risking financial ruin." *Mitchell*, 504 N.W.2d at 211 (Coyne, J., concurring specially). This Court should clarify that the right-to-travel and equal protection do not preclude states from providing limited benefit payments to new residents for reasonable periods of time.

## **B. The California Statute Does Not Penalize The Right-To-Travel.**

The freedom to travel, including the right of free interstate migration, is a fundamental right. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901-02 (1986). Where a residency requirement is challenged, right-to-travel analysis is "a particular application of equal protection analysis." *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1982).

The seminal cases concerning residency requirements in public assistance programs are *Shapiro v. Thompson*, 394 U.S. 618 (1969), and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974). In *Shapiro*, the Court struck down several statutory provisions which denied welfare benefits to residents who had not lived in the state for at least one year. The statutes' purpose was to deter persons seeking more generous public assistance benefits from moving into the state, a purpose which this Court found constitutionally impermissible. 394 U.S. at 629. In *Memorial Hospital*, the Court struck down an Arizona statute requiring one year's residency in a county before receiving non-emergency medical care at county expense. The Arizona statute was also designed to discourage an influx of indigents into the county for the sole purpose of obtaining the benefits of the county's new, modern medical facilities. 415 U.S. at 263.

Under *Shapiro* and *Memorial Hospital*, the right-to-travel is implicated when a statute "actually deters such travel, . . . when impeding travel is its primary objective, . . . or when it uses any classification that serves to penalize the exercise of that right." *Soto-Lopez*, 476 U.S. at



903 (citations omitted). The courts below, applying these principles, found that California's statute penalized the right to migrate.

The Ninth Circuit Court of Appeals' and District Court's decisions are erroneous because California's statute clearly does not penalize travel. Instead the law was carefully crafted so that it would not burden the right of needy families to relocate. Any family subject to the statute will receive at least as much assistance as the family was entitled to receive in its last state of residence, up to the maximum available to longer-term California residents. This statutory scheme makes welfare benefits a *neutral* factor in a family's decision to move to another state. The impact of this aspect of the statute is simply to remove the incentive for families to move to California just to receive higher welfare benefits. California's law, unlike the statute invalidated in *Shapiro*, does not impose a system whereby families lose welfare benefits by moving into the state. Nor does it create a situation whereby families are "trapped" in their current state of residence because they would receive less if they moved to California. Families wishing to migrate to California are not deterred by the challenged law. They are not penalized by being denied all assistance or by being given less assistance than they received in their state of last residence. Moreover, the initial benefit payments are of limited duration. After one year, new families receive the same AFDC grant longer-term residents receive.

In deciding whether the California statute infringes the right-to-travel, this Court should focus on whether the law actually dissuades individuals from moving, not whether new residents initially receive a different benefit.

It is only state action which actually deters a family from moving which infringes the right-to-travel. Because California's scheme neither deters migration of needy individuals into its boundaries nor penalizes the right-to-travel, it is constitutional.

### C. California's Statute Does Not Violate Respondents' Right To Equal Protection.

The courts below erroneously concluded that California's two-tier benefit structure must meet a compelling state interest in order to be upheld. The courts used an incorrect standard. Because the benefit structure neither infringes nor penalizes the fundamental right-to-travel, strict scrutiny is not required. Instead the benefit structure must be reviewed under the rational basis test. Durational residency requirements have been upheld under that test. *Marston v. Lewis*, 410 U.S. 679 (1973) (voter registration); *Sturgis v. Washington*, 368 F. Supp 38 (W.D. Wash. 1973), *aff'd*, 414 U.S. 1057 (1973) (in-state tuition); *Sosna v. Iowa*, 419 U.S. 393 (1975) (divorce proceedings); *Jones v. Milwaukee County*, 485 N.W.2d 21 (Wis. 1992) (general relief).

A law will comply with the rational basis test if the distinctions the law makes rationally further a legitimate state purpose. *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 618 (1985). California has several legitimate state interests which are advanced by the residency requirement. The requirement makes welfare benefits a neutral factor in a family's decision to move. It removes the incentive for families to move solely in order to obtain higher benefit payments. The law also helped meet



California's fiscal crisis. Saving taxpayer dollars is a legitimate public purpose and can justify deferential treatment within government programs. *Califano v. Torres*, 435 U.S. 1, 15 n.7 (1978). California's law is rationally related to legitimate governmental purposes. It is precisely tailored to reducing the incentive for families to move to California just to receive higher welfare benefits and it is rationally related to the goal of reducing state expenditures to help meet the state's fiscal crisis.

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CONCLUSION

The judgment of the court of appeals should be reversed. States can constitutionally enact a benefit structure which, for a reasonable period of time, limits welfare payments to new arrivals to the amount they were entitled to receive in their last state of residence.

Dated: November 16, 1994

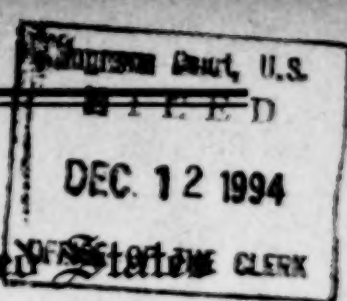
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1994

ELOISE ANDERSON, individually and in her official capacity  
as Director, California Department of Social Services,  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, and  
RUSSELL S. GOULD, Director, California Department of  
Finance,

*Petitioners,*

—v.—

DESHAWN GREEN, DEBBY VENTURELLA, and DIANA P.  
BERTOLLT, on behalf of themselves and all others similarly  
situated,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

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**BRIEF OF AMICI CURIAE**  
**NOW LEGAL DEFENSE AND EDUCATION FUND**  
**(Additional Amici Listed on Inside Cover)**  
**IN SUPPORT OF RESPONDENTS**

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## INTEREST OF AMICI CURIAE

Amici Curiae file this brief in support of Respondents. The specific statements of Amici Curiae are set forth in Appendix I.<sup>1</sup>

## SUMMARY OF ARGUMENT

Section 11450.03 of the California Welfare and Institutions Code creates a classification that deters interstate migration and penalizes those who exercise their right to travel. The classification disfavors residents who have lived in California for less than one year by limiting Aid to Families with Dependent Children ("AFDC") benefits to the amount that would have been available in the resident's prior home state. Victims of domestic violence, who often are subject to economic deprivation as well as physical and emotional abuse, are particularly vulnerable to the harsh effects of the law. Absent adequate financial support, a battered woman's decision to flee an abusive relationship will be constrained by the risk of homelessness, malnutrition and poverty.

The statute is a deterrent to victims of domestic violence who, because they may be stalked by former partners or because they must turn to family and friends for crucial emotional or financial support, often must flee from abuse across state lines. Many abused women, particularly those who flee with their children, have such limited economic resources that their flight from violence results in temporary indigency. The availability of resources sufficient to live independently is a significant factor in a victim's ability to separate from her batterer. The

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<sup>1</sup> Amici Curiae file this brief with the consent of all parties. Letters of consent have been filed with the Clerk of the Court pursuant to Rule 37.3 of the Rules of this Court.



California statute in question would deny even the minimally adequate financial assistance deemed necessary to survive in the state and would reduce substantially a victim's ability to flee. Thus, the statute acts to deter interstate migration by victims of domestic violence.

Those battered women who nevertheless flee to California will be penalized for their exercise of the right to travel. Because the availability of financial assistance plays such a critical role in ending the cycle of domestic violence by enabling the victim to leave the abusive relationship, the statute's differential treatment of newly arrived residents will severely burden the vast majority of battered women who have fled to California. Victims of domestic violence who leave abusive relationships face a high risk of homelessness and other poverty-related ills. Lower AFDC support would exacerbate the financial hardship faced by battered women and their children at a time when they are least able to afford it. For battered women who are unable to support themselves and their children, a decrease in AFDC benefits increases the likelihood that they will be forced to return to their abusive partners.

## ARGUMENT

### **I. BECAUSE THE CALIFORNIA STATUTE CREATES A DURATIONAL RESIDENCY REQUIREMENT THAT RESULTS IN UNEQUAL TREATMENT OF RESIDENTS BASED SOLELY ON THE LENGTH OF TIME THEY HAVE LIVED IN CALIFORNIA, THE STATUTE MUST BE SUBJECT TO STRICT SCRUTINY**

Section 11450.03 of the California Welfare and Institutions Code is a durational residency requirement that divides otherwise similarly situated needy California

residents into two classes: those who have resided in California for more than one year; and those who have not. Under the statute, members of the former class are eligible for an AFDC benefit amount that is minimally adequate for survival in the State of California. Notwithstanding the marginal adequacy of that amount, the latter class of needy California residents are eligible for the lesser of the maximum payment allowable in their state of former residence or the payment amount in California.<sup>2</sup>

For Plaintiffs, like most needy families who have moved to California<sup>3</sup>, the durational residency requirement burdens the right to travel by reducing the AFDC benefit available to a level significantly below that afforded to longer term residents. Plaintiff Deshawn Green and her two children moved to California from Louisiana in an effort to escape domestic violence. J.A. 71. She applied for AFDC several days after arriving in California. *Id.* Had the statute not been enjoined by the District Court,<sup>4</sup> Ms. Green's monthly grant would have been limited to \$190, the maximum allowable grant in Louisiana. *Id.* A

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<sup>2</sup> For families emigrating from those few states in which the maximum allowable AFDC payment is higher than in California, the grant would be calculated under California's formula.

<sup>3</sup> Although this brief addresses the particular effects of the durational residency requirement on battered women and their children, it is important to note at the outset that the statute's effect is borne almost entirely by women. In 1992, 89.4% of AFDC recipient families reported were headed by single mothers. Committee On Ways and Means, U.S. House of Representatives, 103d Cong., 2d Sess., *Overview of Entitlement Programs* 400 (Comm. Print 1994) ("1994 Greenbook").

<sup>4</sup> *Green v. Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993), *aff'd*, 26 F.3d 95 (9th Cir. 1994).



longer term California resident with the same size family would have been eligible for \$624.<sup>5</sup> *Id.* at 72.

The right to interstate travel "has long been recognized as a basic right under the Constitution." United States v. Guest, 383 U.S. 745, 757-58 (1966). A residency requirement is subject to strict scrutiny if it deters, or is intended to deter interstate migration, or if it will penalize the exercise of the right to travel. Attorney General of New York v. Soto Lopez, 476 U.S. 898, 903 (1986) (plurality opinion), 920-21 (O'Connor, J. dissenting).<sup>6</sup>

As *amici* will discuss, by calculating AFDC benefit amounts based on whether and from where a needy family has recently emigrated, the California statute will deter victims of domestic violence from exercising their right to travel from one state to another. Interstate mobility and economic supports are critical to a battered woman's successful escape from domestic violence. Nevertheless, the durational residency requirement denies both to victims of domestic violence. The resulting deterrent effect of the

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<sup>5</sup> Plaintiff Diana Bertolli would have received \$280 per month for herself and her child instead of \$540, J.A. 81, and Plaintiff, Debby Venturella would have received \$341 instead of \$624 for herself and two children. *Id.* at 76. Since Plaintiffs applied for AFDC in California, the grant for a family of three was reduced from \$624 to \$607. 1994 Greenbook at 368. The maximum allowable payments for eligible AFDC recipients in every state except Alaska, Connecticut, Hawaii, Vermont and some regions of New York are lower than in California. 1994 Greenbook at 368-69.

<sup>6</sup> As Plaintiffs state, although presence of any one of the three categories — deterrent purpose, an actual deterrent or penalty — will trigger strict scrutiny, all three are raised by the California durational residency requirement. *Amici* adopt the argument of Plaintiffs and address in this brief the latter two categories as they affect battered women.

statute can only be justified by a compelling government interest.

According to the standards governing analysis of durational residency requirements established by this Court, the relevant question is not whether former residents of a state are being treated the same as those who still live in that state but, rather, whether all current residents of the same state are treated equitably. Thus, it is irrelevant that under the statute, residents of California who emigrated from Louisiana within the twelve months preceding their receipt of AFDC would receive the same benefit amount as current residents of Louisiana.<sup>7</sup> The right to travel "protects residents of a State from being disadvantaged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents." Soto-Lopez, 476 U.S. at 905 (1986); see also Zobel v. Williams, 457 U.S. 55, 60 n.6 (1982). Residents of California who otherwise are eligible for the AFDC support in the amount necessary for basic subsistence in California, are penalized by the durational residency requirement which operates to deprive them of the basic necessities of life by permitting support only at the level necessary in, for example, as in Plaintiffs' cases, Louisiana, Colorado or Oklahoma.

For Plaintiffs, as for all battered women fleeing domestic violence, the deprivation is particularly onerous. Adequate financial assistance often is the key factor that

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<sup>7</sup> Furthermore, as the District Court noted "the measure cannot fairly be said to provide the same payment as new residents could have received in the state of their prior residence since the cost of living, particularly housing, varies so substantially from state to state and generally is much higher in California than elsewhere." Green v. Anderson, 811 F. Supp. at 521.

enables battered women and their children to remain separated from their abusers. Denial of subsistence level benefits may force battered women to return to dangerous, and often life-threatening situations.

**II. BATTERED WOMEN WILL BE HARMED BY THE DURATIONAL RESIDENCY REQUIREMENT BECAUSE THEY FREQUENTLY MUST FLEE ACROSS STATE LINES TO PROTECT THEMSELVES AND THEIR CHILDREN**

**A. Because Separation Is The Most Dangerous Time For Many Battered Women, Victims Of Domestic Violence Often Must Cross State Lines To Reach Safety**

Between three and four million women each year are battered by husbands, partners and boyfriends. Domestic Violence: Not Just A Family Matter: Hearing Before the Subcommittee on Crime and Criminal Justice of the House Committee on the Judiciary, 103rd Cong., 2nd Sess. (June 30, 1994) (statement of Senator Joseph Biden Jr.); Joan Zorza, Women Battering: High Costs and the State of the Law, 28 Clearinghouse Rev. 383, 386 (1994) [hereinafter State of the Law]; Patricia Horn, Beating Back the Revolution, Dollars and Sense, Dec. 1992 at 12. Half of these women are beaten severely and in 30 percent of the domestic violence incidents reported, assailants use weapons. Joan Zorza, supra, State of the Law, at 386. In the United States, 31.5 percent of women killed are murdered by their husbands. Id. at 387. Batterers exert control over their partners' lives by force, threat of force, and emotional and economic abuse.

This Court previously has acknowledged the danger and magnitude of the domestic violence epidemic. Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. \_\_\_, 112 S. Ct. 2791, 2826-30 (1992). In Casey, this Court invalidated, under an undue burden standard, a spousal notification provision of an abortion statute, concluding that

there are millions of women in this country who are the victims of regular physical and psychological abuse at the hands of their husbands. Should these women become pregnant, they may have very good reasons for not wishing to inform their husbands of their decision to obtain an abortion. . . . Many may have a reasonable fear that notifying their husbands will provoke further instances of child abuse . . . . Many may fear devastating forms of psychological abuse from their husbands, including verbal harassment, threats of future violence, the destruction of possessions, physical confinement to the home, the withdrawal of financial support . . . .

Id. at \_\_\_, 112 S. Ct. at 2828-29.

As the Court noted in Casey, there is a positive correlation between spousal abuse and child abuse. Id. at \_\_\_, 112 S. Ct. at 2828. Like Plaintiffs, many women attempt to flee domestic violence not only to protect themselves, but to protect their children. Children of battered women are twice as likely to be abused and their fathers are three times more likely to be their abuser. Mildred Pagelow, Justice for Victims of Spouse Abuse in Divorce and Child Custody Cases, 8 Violence and Victims 69, 77 (1993) [hereinafter Justice for Victims]; Violence Against Women: Domestic Violence Hearing Before the



Senate Judiciary Committee, 101st Cong., 2nd Sess. 7 (Dec. 11, 1990) (statement of Susan Kelly-Dreiss, Pennsylvania Coalition Against Domestic Violence).

Between 50 and 90 percent of battered women attempt to escape their abusive environment. Patricia Horn, *supra*, at 21. However, their efforts are hampered, and often frustrated, by the economic deprivation that frequently accompanies domestic violence, *see* discussion *infra* at 15-22, and by the volatile response of the abuser to the victim's departure. Abusers do not lightly relinquish control over their former partners. Typically, an abuser searches desperately for his partner once she has fled. For many abused women, the only way to stop violence that continues after separation is to move a great distance away from the abuser. Plaintiff DeShawn Green felt that it would not be safe for her and her children to live in the same state as her batterer. J.A. 72. Plaintiff Diana Bertolli moved to California from Colorado because she was afraid for her own safety and the safety of her son. J.A. 78. Testifying before the House Subcommittee on Crime and Criminal Justice, one victim of domestic violence described her flight:

Sixteen years ago I packed everything that would fit into a single suitcase, left behind the few possessions I owned, took my two month old baby girl and ran for my life. . . . As I got on the airplane in Dallas that day, I knew that I would never go back and that I could now begin to create a future for my daughter and myself, a future of freedom and safety.

Domestic Violence: Not Just A Family Matter: Hearing Before the Subcommittee on Crime and Criminal Justice of the House Committee on the Judiciary, 103rd Cong., 2nd Sess. (June 30, 1994) (statement of Karla DiGirolamo).

Leaving an abusive relationship does not always put an end to the violence. Department of Justice statistics show that divorced and separated women report being battered 14 times as often as women still living with their partners. Caroline Harlow, U.S. Dep't of Justice, Female Victims of Violent Crime 5 (1991). In fact, battering often increases after separation, as batterers escalate their violence in an attempt to coerce the battered woman into reconciliation or to retaliate for her departure. Mildred Pagelow, *supra*, Justice For Victims, at 72; Margo Wilson and Martin Daly, Spousal Homicide Risk and Estrangement, 8 *Violence and Victims* 3 (1993); *see* Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 Mich. L. Rev. 1, 5-6 (1991) ("At the moment of separation...the batterer's quest for control often becomes most acutely violent and potentially lethal"). Testifying before Congress, one victim described her batterer's response when she tried to escape with her two small children: "You lied to me when you said our wedding vows and said until death do we part. That's the way its going to be." Oversight Hearing on the Issue of Violence Against Women Before the Subcommittee on Crime and Criminal Justice of the House Committee on the Judiciary, 102d Cong., 2nd Sess. 7 (Feb. 6, 1992) (statement of Jane Doe on Behalf of Victim Services). Battered women who leave their partners face an elevated homicide risk. Margo Wilson and Martin Daly, *supra*, at 7. The danger of separation assault is particularly acute during the first few months of separation. *Id.* at 10; *see* Martha Mahoney, *supra*, at 6 (naming the escalating violence "separation assault" and identifying it as a common thread uniting "suits on enforcement of temporary restraining orders, the cases with dead women. . . and the cases with dead men.").

The criminal law is replete with cases describing serious bodily injury and murder committed by an abuser in



response to a battered woman's flight. See Pagelow, *supra*, *Justice For Victims*, at 72. For example, in *Godfrey v. Georgia*, 446 U.S. 420 (1980), the petitioner was convicted of murdering his wife soon after she had left the marital home and filed for divorce. The Court noted that Godfrey had abused his wife during the marriage, *id.* at 424 n.3, and described the victim's departure as following a particularly violent episode. *Id.* at 424.

Increased violence resulting from a battered woman's escape also has been evident in cases in which battered women have killed their abusers. In *Kansas v. Hundley*, 236 Kan. 461, 693 P.2d 475 (1985), the Kansas Supreme Court described the events preceding the killing:

This was all of [decedent's] violence [defendant] could take. She moved to the Jayhawk Junior Motel. As in typical wife-beating cases, her moving did not eliminate the problem. [Decedent] then started a pattern of constant harassment. He would call her night and day to threaten her life and those of her family. She was so frightened she started carrying a gun.

On . . . the day of the shooting, [defendant] had seen [decedent] early in the day, at which time [he] told [her] he was going to come over and kill her. That night she heard a thumping on her motel door while she was in the bathroom. By the time [she] got out of the bathroom [he] had broken the door lock and entered the room. His entry was followed by violence. [She] was hit and choked and life was again threatened.

*Id.* at \_\_\_, 693 P.2d at 476. Similarly, in a case involving the use of battered woman syndrome evidence and demonstrating the severity of separation assault against battered women, the Supreme Court of Pennsylvania

detailed the history of violence between the defendant and decedent:

[S]he agreed to meet with him to make it clear that she did not want to see him any more. When [defendant] asked [decedent] to take her home from this meeting, [he] drove instead to a shopping center where he dragged her out of the car and then repeatedly attempted to run over her with the car. Failing to run over [her], [he] finally jumped out of the car and punched [her], breaking her nose and rendering her semi-conscious.

*Pennsylvania v. Stonehouse*, 521 Pa. 41, 555 A.2d 772, 775 (1989).

Even escape to a shelter for victims of domestic violence is not always successful. Many batterers will stalk their victims. Using personal contacts or creative resources, they are able to track down the addresses of local shelters. Kathleen Ferraro and John Johnson, *The New Underground Railroad*, 6 *Studies in Symbolic Interaction* 377, 380-83 (1985) (describing case histories in which batterers got information from friends on the police force; used visitation with children to locate their victims; or begged for information from sympathetic taxi drivers).

State legislators have begun to recognize that many women are relentlessly terrorized by men with whom they previously had a relationship and that existing laws and orders of protection cannot stop the abuse. California was the first state to adopt an "anti-stalking" law in an attempt to deal with the problem.<sup>8</sup> Forty-eight states and the

<sup>8</sup> Rosalind Resnick, *California Takes Lead: States Enact "Stalking" Laws*, Nat'l L.J., May 11, 1992, at 3, 27 (California enacted law in

District of Columbia now have anti-stalking laws.<sup>9</sup> Despite the widespread enactment of anti-stalking laws, batterers continue their persistent terrorism of women who have left them.<sup>10</sup> Judicial opinions upholding convictions under the stalking laws reveal the menacing nature of batterers continuing abuse:

Following appellant's separation from [the victim] in 1987, he engaged in a pattern of conduct that frequently involved following her and maintaining surveillance on her residence. In the summer of 1992, after [the victim] began dating Bill Carter, appellant's surveillance activities increased dramatically. These activities included driving up and down the dead-end street where [the victim] lived, parking within sight of the residence, and watching the house for extended periods of time. . . . In July 1992, [the victim] was "alarmed" after discovering appellant had followed her to an out-of-town wedding . . . .

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1990 after five women were murdered in succession by former husbands or boyfriends.).

<sup>9</sup> M. Katherine Boychuk, Comment, Are Stalking Laws Unconstitutionally Vague or Overbroad?, 88 Nw. U. L. Rev. 769 n.1 (1994).

<sup>10</sup> Recognizing the extent of the problem, Congress recently amended 28 U.S.C. § 534 by adding a provision granting courts access to national criminal information databases for use in domestic violence or stalking cases. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 §40601, 108 Stat. 1796, 1994-51. That provision also authorized federal and state agencies to enter into databases information regarding arrests, convictions and warrants for stalking and domestic violence. Id.

On September 19, 1992, at 7:00 a.m. Mr. Carter awoke to a telephone call from a male caller who stated, "If you don't stop seeing her, I'm going to shoot both your asses." . . .

The evidence established that in response to appellant's threat and course of conduct, [the victim carried tear gas in her purse, had motion detector lights installed on the outside of her home, and "slept with a hammer" beside her bed. She watched for appellant everywhere she went and on one occasion, she obtained a police escort . . . .

Woolfolk v. Virginia, \_\_ Va. \_\_, 447 S.E.2d 530, 531-32 (Ct. App. 1994).

In an effort to provide escape from the most persistent abuser, battered women's shelters and service providers have banded together, often informally, in what has been described as a modern incarnation of the "underground railroad." Kathleen Ferraro and John Johnson, supra, at 378. The underground railroad enables women to flee to other cities and states and begin a violence-free life for themselves and their children.<sup>11</sup> For one victim of domestic violence, "what she needed was an escape route to a city where neither she nor [her batterer] had other contacts or resources. This is precisely what the underground railroad provided. She was whisked off to a city about 2,000 miles away . . . ." Id. at 381.

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<sup>11</sup> In recognition of battered women's need for secrecy as they flee under these circumstances, the United States Postal Service has been ordered to "promulgate regulations to secure the confidentiality of domestic violence shelters and abused person's addresses." 42 U.S.C. § 13951, added by Pub. L. No. 103-322 § 40281 (1994).



**B. Having Made The Decision To Escape, Victims of Domestic Violence Often Must Seek Shelter And Support From Family Members Who Live In Other States**

Having made the decision to flee, women in abusive relationships often must move to another state to receive crucial emotional support and transitional shelter from families and friends while they try to put their lives back in order. See Lee H. Bowker, Beating Wife Beating 11, 75, 136 (1983); Edward W. Gondolf and Ellen R. Fisher, Battered Women as Survivors: An Alternative to Treating Learned Helplessness 28 (1988).

Plaintiffs are good examples of this pattern. DeShawn Green left her abusive partner in Louisiana to return to her childhood home, Sacramento, California, hoping to take shelter with her mother. J.A. 71. Debby Venturella left her increasingly abusive husband in Oklahoma and moved with her child to California to stay with her parents and grandfather. J.A. 75. Diana Bertolli and her son moved in with her uncle in California because she feared that the partner she left behind in Colorado was a danger to them. J.A. 80. Many women in Plaintiffs' position, with no place else to turn, seek help from relatives in distant locations. See, e.g., Kansas v. Stewart, 243 Kan. 639, 763 P.2d 572 (1988) (battered wife fled from Kansas to her sister's home in Oklahoma).

Considering a challenge to a one-year county residency requirement for free medical care, this Court in Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974), noted the deterrent effect of the statute on one segment of the population:

A person afflicted with a serious respiratory ailment, particularly an indigent whose efforts to provide a living for his family have been inhibited by his incapacitating illness, might well think of migrating to the clean dry air of Arizona, where relief from his disease could also bring relief from unemployment and poverty. But he may hesitate if he knows that he must make the move without the possibility of falling back on the State for medical care . . . .

Id. at 257. Battered women, even more than the ailing indigents in Maricopa, must emigrate to find relief from the violence in their homes. By denying newly arrived residents the means to acquire basic necessities, California's durational residency requirement effectively limits the escape routes available to families that need to flee across state lines. As a result, the statute deters the exercise of the right to migrate between states and must be subject to strict scrutiny. See, e.g., Soto-Lopez, 476 U.S. at 903 (plurality opinion), 920-21 (O'Connor, J. dissenting).

**III. THE CALIFORNIA DURATIONAL RESIDENCY REQUIREMENT DETERS BATTERED WOMEN'S EXERCISE OF THEIR RIGHT TO TRAVEL**

**A. The Residency Requirement Will Burden The Right To Travel Of Battered Women Whose Escape From Abuse Will Increase Their Economic Need**

Because the economic condition of battered women's lives is desperate, the durational residency requirement will have a devastating effect on their ability to flee domestic violence. In Shapiro v. Thompson, 394 U.S. 618, 622



(1969), this Court invalidated a one-year waiting period for the receipt of welfare benefits reasoning that the statutes in question were

. . . well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute.

*Id.* at 629. To preserve their safety and the safety of their children, Plaintiffs in this case, as well as many other battered women and their children, crossed state lines in order to begin a new life. As *amici* discuss *infra* at 16-19, many battered women's financial needs are most acute when they first separate from their batterers. The denial of adequate financial assistance at this critical time will "chill the assertion of [the right to travel] by penalizing those who choose to exercise [it]." *Id.* at 631 (citing *United States v. Jackson*, 390 U.S. 570, 581 (1968)).

While remaining in abusive relationships, battered women often are subject to complete control and financial isolation by their batterers. Battered women's economic vulnerability is exacerbated by their need to flee persistent and escalating violence. Women frequently must leave quickly and secretly without time to pack. Women of all income levels often must leave everything behind. Barbara Davidson and Pamela Jenkins, *Class Diversity in Shelter Life*, 1989 *Social Work* 491, 492. As a result, many women must escape and hide from a batterer with very few resources, often consisting only of money they have managed to hide or scrape together over long periods of time. See, e.g., Lewis Okun, *Women Abuse: Facts*

*Replacing Myths* 69 (1986); Del Martin, *Battered Wives* 84 (1976) (citing study where a woman managed to save \$1.75 over a two-year period. Adding that to the five dollars her grandmother sent her for Christmas, she had just enough to buy bus tickets).

Women who flee usually take their children with them and thus have additional financial responsibilities. Barbara Davidson and Pamela Jenkins, *supra*, at 492. Because battered women may seek to protect themselves and their children by trading financial support or distribution of assets for more protective custody or limitations on the batterers' visitation with their children, they often are unable to rely on sources of support available to other single parents. Mildred Pagelow, *supra*, *Justice For Victims*, at 74; The Family Violence Project, *Family Violence: Improving Court Practices* [Recommendations from the National Council of Juvenile and Family Court Judge's Family Violence Project] (1990). In some instances, abused women are, legitimately, too afraid to seek child support or maintenance because they do not want any contact with their abuser. Patricia Horn, *supra*, at 22. Where women do pursue child support or divorce litigation, batterers often will retaliate by waging financial warfare. A batterer may, for example, empty the joint bank accounts and prolong divorce or custody proceedings to increase the victim's legal costs. See *id.* at 21.

When less drastic measures have not stopped the abuse and harassment, some women have not only fled, but "gone underground," cutting off all contact with their former lives and adopting new names. See, e.g., Kathleen Ferraro and John Johnson, *supra*, at 378. As a result, they encounter other obstacles to financial stability. They cannot seek child support because it would alert the man stalking them to their new location. Cf. 42 U.S.C. § 602(a)(26) (1991);

45 C.F.R. §§ 232.12, -.42 (1992) (AFDC recipients are released from obligation to cooperate with state's child support collection efforts if doing so would threaten physical or emotional harm). They also cannot try to recover possessions left behind in the initial escape and may face difficulty obtaining a new job because they cannot risk giving old employers as references for fear that either the potential employers would learn their true identities or their old employers would discover their new locations.

Women's escape from violence in their own homes is dependent, to a great extent, on available financial resources. See discussion *infra* at 22-25. Without adequate income support, women who leave battering relationships face a high risk of becoming homeless. Battered women with or without children comprise a significant portion of the homeless population. Joan Zorza, Woman Battering: A Major Cause of Homelessness, 25 Clearinghouse Rev. 421, 421 (1991) [hereinafter Homelessness]; Donna Mascari, Comment, Homeless Families: Do They Have a Right to Integrity?, 35 UCLA L. Rev. 159, 163 (1987). According to one recent survey of women housed in a shelter for victims of domestic violence, when asked to specify what resources they needed, 41 percent of the women seeking to end abusive relationships described housing as a necessary resource. Cris M. Sullivan, et al., After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter, 7 Violence and Victims 267, 272 (1992). Without access to the support necessary to survive at a minimal level, a victim of domestic violence and her children may be forced to choose between abuse or homelessness and indigency. For instance, Plaintiffs themselves were unable to find affordable housing in California with the reduced grant amount. J.A. 72, 76, 81.

Section 11450.03 of the California Welfare and Institutions Code would only further diminish the economic resources available to victims of domestic violence.<sup>12</sup> Faced with poverty and homelessness, battered women, particularly those with children often will

balance the possible harm to the children through inadequate housing with the harm from maintaining the relationship. Unless the children are threatened directly or indirectly, the woman may well choose for

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<sup>12</sup> Battered women with children face significant financial obstacles as a result of their abusers' conduct towards them. However, these women and their families also must confront the economic hurdles facing all female-headed households. In California, fewer than half of all children with court-ordered child support receive money from their noncustodial parent. Grim Lives of State's Kids, San Francisco Examiner, Sept. 25, 1994 at B-1 (reporting recent study by Children Now.) By some estimates, absent parents owe \$18 billion in uncollected child support. Patricia Horn, *supra*, at 22. This has a substantial negative impact on women who head 78 percent of all single-parent households and 88 percent of poor single-parent families. Population Reference Bureau, Inc., What the 1990 Census Tells Us About Women: A State Factbook 20, 32 (1993). In the third quarter of 1994, women who worked full-time earned only 77.9 percent of the median earnings for men. Bureau of Labor Statistics, Usual Weekly Earnings of Wage and Salary Workers: Third Quarter 1994 (Oct. 26, 1994). Fewer than half of all employed women are full-time year-round workers. Population Reference Bureau, Inc., *supra*, at 85. This is significant because families headed by part time workers are four times more likely to be poor. General Accounting Office, Report to the Chairman, Subcommittee on Employment and Housing, Committee on Government Operations, House of Representatives, Workers at Risk: Increased Numbers in Contingent Employment Lack Insurance, Other Benefits 5-6 (1991). When the part-time worker is also a single parent, the family is eight times as likely to be poor. *Id.* For working poor women, they face the additional cost of child care which often amounts to 23 percent of their income. 1994 Greenbook at 541. For nonpoor families, child care costs represent 9 percent of their income. *Id.*



them rather than herself. In a very real way, she is choosing between known and unknown dangers . . . .

Martha Mahoney, *supra*, at 23. Because the California statute poses a danger of homelessness and extreme deprivation to a battered woman and their children, it will deter the flight of battered women from abusive home environments.

**B. Battered Women Often Are Economically Dependent On Their Abusers And Thus Have Substantial Economic Needs That Will Not Be Met By Reduced AFDC Benefits**

Because many domestic violence victims are economically dependent on the men who abuse them, few victims have the resources necessary to begin a new life for themselves and their children. Batterers commonly isolate battered women from financial resources. *See Casey*, 505 U.S. \_\_\_, 112 S. Ct. at 2828 (citing Lenore Walker, *The Battered Woman Syndrome* 28 (1984)). For example, many battered women do not have ready access to cash, checking accounts, or charge accounts. Lisa G. Lerman, *A Model State Act: Remedies for Domestic Abuse*, 21 Harv. J. on Legis. 61, 90 (1984). One study showed that 27 percent of battered women had no access to cash, 34 percent had no access to a checking account, 51 percent had no access to charge accounts, and 22 percent had no access to a car. Lenore Walker, *supra*, at 28. Batterers economically isolate women of all income levels. Lisa Freedman, *Wife Assault in No Safe Place* 47 (Connie Guberman and Margie Wolfe, eds. 1985); Patricia Horn, *supra*, at 21. This economic isolation may itself increase the violence. According to experts on domestic violence, the more economically dependent a woman is on her batterer, the more likely she is to be at risk for serious

injury. Michael J. Strube and Linda S. Barbour, *The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment*, 1983 J. of Marriage and the Fam. 785, 786.

Some batterers who are distrustful of any outside contact their partners may have, forbid their partners from working outside the home. *See* Mildred D. Pagelow, *Women Battering: Victims and Their Experiences* 150 (1981); Patricia Horn, *supra*, at 12. In one study, one third of the women surveyed reported that their batterers had prohibited them from working. Melanie Shepard and Ellen Pence, *The Effect of Battering on the Employment Status of Women*, 3 *Affilia* 55 (1988). Plaintiff Diana Bertolli illustrates a similar pattern. She was forced to discontinue her school attendance when her abusive partner confined her to her home. J.A. 80.

The situation of battered women who work outside the home is little better than those who do not. They often are forced to relinquish their earnings to batterers who insist upon handling all the money in the relationship. Lenore Walker, *Abused Women and Survivor Therapy* 62 (1994); *see also* Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem. Forging the Solutions*, 60 Wash. L. Rev. 267, 280-81 & n.60 (1985). Furthermore, battered women's efforts to become financially independent also are punished. *See* Richard Gelles and C.P. Cornell, *Intimate Violence in Families* 75 (1985) (finding that wives who have better jobs than their husbands face an increased risk of assault). Women who are battered also may be harassed by their partners at work. Melanie Shepard and Ellen Pence, *supra*, at 57-59; Lisa Freedman, *supra*, at 52. These women can lose their jobs because of the abusers' disruptive behavior. Many victims frequently are absent from work because of injury inflicted



by their batterers. One study found that 96 percent of the women who were working while involved in an abusive relationship experienced problems at work. Joan Zorza, supra, State of the Law at 384. More than half of their abusers harassed them over the telephone. Id. Over half of the women reported missing work, being reprimanded, or having trouble with job performance. Id. at 385. It is not surprising that the rate of unemployment among battered women is higher than that of other women. See Michael J. Strube and Linda S. Barbour, supra, at 786.

The plight of battered women illustrates the burden the California statute places on the right to travel. A variety of factors make abused women at least temporarily indigent. If they are to be provided with benefits well below the existing California grant levels, they may be forced to remain in an abusive relationship rather than exposing their children to the dangers of poverty. See discussion supra at 19-20. Alternatively, they may find themselves homeless or they may be driven back to their abusive partners, in either case seriously endangering themselves and their children.

#### **IV. A REDUCTION IN AFDC BENEFITS BASED ON RESIDENCY WILL PENALIZE TRAVEL AND PERPETUATE DOMESTIC VIOLENCE BECAUSE ECONOMIC INDEPENDENCE IS A SIGNIFICANT FACTOR IN BATTERED WOMEN'S ABILITY TO ESCAPE AND REMAIN SEPARATE FROM THEIR ABUSERS**

It is widely recognized that economic independence plays a major factor in battered women's decisions to leave a life of domestic violence behind. As described above, many women remain trapped in abusive relationships because they lack resources to leave, and fear the poverty

they may face. Battered women who leave even severely violent relationships often return to their batterers for economic reasons. Casey, 505 U.S. \_\_\_, 112 S. Ct. at 2828. Without adequate financial assistance, battered women are forced to accept violence as an inevitable fact of life.

Economic dependence on battering men serves to keep battered women locked into violent relationships. "The fear of poverty or a greatly lowered standard of living is a major reason why women stay in abusive situations . . . ." Ginny NiCarthy, Getting Free: A Handbook for Women in Abusive Relationships 11 (1986). Women are more likely to stay in an abusive relationship when the economy is bad and unemployment is high because it will be more difficult for them to find work and support themselves and their children. Patricia Horn, supra, at 13. In addition, services targeted to battered women provide only emergency help, insufficient to allow women to support their families and move toward economic independence. See id. at 21-22 (most battered women's shelters allow only eight week stay). As a result, many battered women are forced to allow "economic needs [to] take precedence over [their] physical and emotional need to be free from abuse." Ida M. Johnson, Economic, Situational, and Psychological Correlates of the Decision-Making Process of Battered Women, 73 Fam. in Soc'y: J. of Contemp. Human Serv. 168, 175 (1992). See Michael J. Strube and Linda S. Barbour, Factors Related to the Decision to Leave an Abusive Relationship, 46 J. of Marriage and the Fam. 837, 837 (1984).

Adequate income supports do make a difference to women who have left batterers. The most likely predictor of whether a battered woman will permanently separate from her abuser is whether she has the economic resources

to survive without him. Edward W. Gondolf and Ellen R. Fisher, supra, at 95-96; see also Ida M. Johnson, supra, at 174-75; Lewis Okun, supra, at 55 (citing studies that find women commonly return because they lack economic resources); B.E. Aguire, Why Do They Return? Abused Wives in Shelters, 30 Social Work 350, 350 (1985).

Battered women must have a "sound bridge out of poverty," Edward W. Gondolf and Ellen R. Fisher, supra, at 94, in order to afford to live safely and separately from their abusive partners. Battered women who have risked and survived separation assault nevertheless will be penalized by the durational residency requirement. The inadequacy of the financial assistance provided to new residents may force them to return to violent situations. Alternatively, the denial of adequate assistance may result in homelessness. As noted earlier, none of the Plaintiffs were able to find housing affordable with the reduced AFDC grant. See discussion supra at 18; see also Joan Zorza, supra, Homelessness at 422 (31 percent of abused women in New York City shelters returned to their batterers primarily because they could not locate long-term housing).

The denial of adequate financial assistance to families by operation of the California durational residency requirement heightens the financial obstacles facing battered women. The threat of homelessness and poverty resulting from a lack of available resources will deter battered women's exercise of the right to travel. See Shapiro, 394 U.S. at 629. Furthermore, as a result of Section 11450.03 of the California Welfare and Institutions Code, women who have crossed state lines to escape domestic violence and have established residency in California will be denied the financial assistance deemed minimally adequate for survival in California. Because differential AFDC benefits

for newly-arrived residents would deprive battered women of the resources and alternatives necessary to escape abuse, their exercise of the right to travel is penalized. See Maricopa, 415 U.S. at 258-59.

## CONCLUSION

For the reasons stated, the judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

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## **APPENDIX**



## APPENDIX I

### STATEMENTS OF INTEREST OF AMICI CURIAE

**American Medical Women's Association, Inc.** ("AMWA"), a nonprofit organization of 13,000 women physicians and medical students, has a particular concern with all issues that affect the health of women. AMWA recognizes that domestic battering is the single greatest cause of injury to women and that it frequently goes undiagnosed and untreated, leaving the victim exposed to repeated violence. The Association deplors this victimization and abuse, and believes that a significant result of the application of the California durational residency requirement is to inhibit women's pursuit of safety.

**AYUDA, Inc.** is a non-profit legal services agency, founded in 1971, which offers legal representation and social service assistance to indigent Spanish-speaking and foreign born residents of the District of Columbia. Since 1985, Ayuda has represented 98% of the Spanish-speaking battered women who turn to the D.C. courts for protection, offering assistance to thousands of immigrant and refugee battered women and children who reside in the D.C. metropolitan area. In addition, Ayuda played a central role in securing passage of the Violence Against Women Act and worked particularly on provisions that assist battered immigrant women and children and interstate enforcement of protection orders. Ayuda understands that to survive domestic violence, battered women often must cross state lines in their search for shelter and safety from continued abuse. Without the ability to survive economically, few battered women succeed in their attempts to leave their batterers. We are concerned about the impact this case will have on battered women's ability to flee violence.

**California Women Lawyers ("CWL")** is one of the largest women's bar associations in the nation, representing over 30,000 women lawyers. CWL's mission is to promote the advancement of women and the achievement of gender parity. CWL has involved itself in both the legislative and judicial processes for the betterment of the legal climate for women in California. Specifically, CWL is committed to the fair and equal treatment of persons of all genders and financial means.

Now in its twenty-first year, **Equal Rights Advocates ("ERA")** is one of the country's oldest women's law centers. ERA is dedicated to empowerment of women through the establishment of their economic, social, and political equality. Beginning in 1974 as a teaching law firm specializing in issues of sex-based discrimination, ERA has evolved into a legal organization with a multifaceted approach to addressing women's issues including litigation, advice and counseling, public education and public policy initiatives. ERA's mission includes promoting economic independence of women, including those women who need to rely on government support during times of transition.

The Legal Action Center for the Homeless is a ten-year-old organization that has worked to assist the homeless and other disenfranchised New Yorkers through direct assistance and impact litigation. The **Family Violence Project of the Legal Action Center for the Homeless** was initiated in October 1993 by staff with 15 years of experience working with and for battered women and their children. Current work of the Family Violence Project includes system reform and advocacy with the New York City Police Department, the Child Welfare Administration and the Health and Hospitals Corporation, as well as direct assistance to battered women and their children.

The **National Battered Women's Law Project**, a program of the National Center on Women and Family Law, acts as legal backup to Legal Services programs and battered women's programs and provides pro bono information in all fifty states. The Project serves as an information clearinghouse for advocates, attorneys and policymakers on legal issues facing battered women; produces manuals, handbooks, public education materials and resource packets on these legal issues; analyzes federal and state issues which affect battered women; assists advocates, policymakers and attorneys on issues faced by battered women; and reports on legal and legislative developments with respect to battered women's issues in The Women's Advocate, the bi-monthly newsletter of the National Center on Women and Family Law. The Project represents the interests of battered women, who are frequently reduced to poverty and homelessness on account of the physical, emotional, sexual and economic abuse inflicted upon them by their abusive partners; many of these women are forced to flee to other states in order to protect themselves and their children from further abuse.

The **National Council of Negro Women, Inc.**, established in 1935, is a voluntary non-profit membership organization committed to the advancement of educational, social, and economic opportunities for African American women. Through our thirty-four National African American Women's affiliate organizations, and 250 community based sections in forty-two states, NCNW has an outreach to four million women. NCNW supports the NOW Legal Defense and Education Fund amicus brief in Anderson v. Green, which argues that California's imposition of a durational residency requirement upon recipients of Aid to Families with Dependent Children will harm women crossing state lines in order to escape abusive relationships. As a women's organization committed to



promoting wellness among African American women, NCNW opposes any legal barriers that would infringe on a woman's ability to sustain herself and her children after fleeing an abusive relationship.

The **National Organization for Women** was founded in 1966 as a political advocacy and action organization working to end all forms of discrimination against women. The organization currently has 250,000 members located across the United States and over 600 chapters which comprise our activist base. We have worked since our inception for the rights of low-income women, as we oppose any welfare measures which have the effect of harming poor women and their children. The statute in question in Anderson v. Green discriminates against women fleeing domestic violence by denying them the same welfare benefits as California residents.

The **National Women's Health Network** is a non-profit membership group which advocates for better federal health policies for women. The Network works to expand access to health care services for poor women, older women, women of color, lesbians, rural women and disabled women. The Network is supported by 16,000 individual and 300 organizational members representing over 500,000 women and men. The Network believes that the decision in this case will have implications on women's access to government sponsored health care.

The **National Women's Law Center** ("Center") is a non-profit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women, including employment, education, family support, income security, reproductive rights and health -- with special attention given to the concerns of low-income women. In

its work on income security issues, the Center has fought to ensure that the statutory and constitutional rights of applicants for, and recipients of, Aid to Families with Dependent Children benefits are advanced and protected. The Center is and will continue to be involved in all efforts to ensure that the AFDC system adequately addresses the needs and concerns of poor women and their children.

The **Northwest Women's Law Center** is a non-profit public interest legal organization based in Seattle, Washington, that works to advance the legal rights of women in the Pacific Northwest through litigation, education, legislative advocacy and a free legal information and referral phone service. Since its founding in 1978, one of the Law Center's priorities has been to protect and advance the rights of women and children who are victims of domestic violence. The Law Center has a long history of litigation and participation as amicus curiae in cases around the country on behalf of victims of domestic violence who seek to flee violent relationships and establish economic independence.

**NOW Legal Defense and Education Fund** ("NOW LDEF") is a leading national non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and secure equal rights. NOW LDEF was founded in 1970 by leaders of the National Organization for Women. Eliminating domestic violence and improving financial supports for poor women are major concerns of NOW LDEF.

**Planned Parenthood Federation of America, Inc.** (PPFA) is the oldest and largest voluntary organization dedicated to the provision of reproductive health care and advocacy of reproductive rights. Incorporated in 1922 as a



New York not-for-profit corporation, PPFA consists of a national office and 164 autonomous affiliate members in 49 states who operate over 900 clinics nationwide, providing medical and educational services to over 4,000,000 people. Planned Parenthood believes that welfare reform, and all social welfare policies, must respect individual dignity, encourage self-empowerment, and ensure the fundamental right to reproductive choice.

**Women Lawyers Association of Los Angeles** is a local bar association with more than 1,000 members. Founded in 1919, WLALA includes in its statement of purpose furthering the understanding of and support for the legal rights of all women and promoting equality and equal opportunity for all people. WLALA has long fought for the rights of battered women. We oppose the statute at issue in this case because it undermines the efforts of battered women who move to our state for the support of family and friends by denying them the full AFDC benefits in California.

The **Women's Economic Agenda Project ("WEAP")** was founded eleven years ago in Oakland, CA to advocate for economic rights of low-income women and their families throughout the state. Since its foundation, WEAP has trained thousands of women in leadership development, offered seminars on economic rights and advocated for poor women at all levels of California society. WEAP wishes to join the amicus brief about the effects of two-tiered welfare system on battered women, since WEAP encounters this population among its constituency every day and are only too well aware of the inequities of this system. WEAP represents the perspective of over four-million poor women and their families throughout California.

The **Women's Law Center, Inc.** is an advocacy organization whose membership of 400 consists of attorneys, judges, and other concerned persons in the State of Maryland. In existence since 1971, the goal of the Women's Law Center is to promote the legal rights of women through litigation, legislation and education. The Women's Law Center has a long history of involvement with domestic violence, including the creation with other groups of a domestic violence legal clinic, training of attorneys to handle domestic violence cases on a *pro bono* basis, and operation of a Family Law Hotline. The Women's Law Center believes the issues raised in the Anderson v. Green case, as they affect victims of domestic violence, are critical to the legal rights of women.

The **Women's Law Project** is a Philadelphia-based non-profit public interest legal center dedicated to improving the legal and economic status of women and their families through litigation, public policy development, public education and individual counseling. Since its founding in 1974, the Law Project has engaged in extensive activities challenging gender discrimination in employment, education, insurance, and in family matters relating to custody, support, domestic violence and divorce. Family law, in particular, has been a major focus of both the telephone counseling service, which handles approximately 4000 inquiries a year relating to some aspect of family law, and the Law Project's litigation efforts, which include both original litigation and participation as amicus curiae in numerous family law cases.

Founded in 1971, the **Women's Legal Defense Fund ("WLDF")** is a national advocacy organization located in Washington, D.C., that works at the federal and state levels to promote policies that help women achieve equal opportunity, quality health care, and economic and physical

security for themselves and their families. WLDF has worked for more than a decade for child support and welfare reforms that assist poor families, and has participated as amicus curiae in cases challenging punitive and coercive welfare policies. WLDF also advocates for policies to combat domestic violence.

The YWCA of the U.S.A. is the oldest women's membership organization in the nation. Founded in 1858, it currently serves over two million girls, women and their families through 400 YWCAs in 4,000 locations throughout the country. Strengthened by diversity, the Association draws together members who strive to create opportunities for women's growth, leadership and power in order to attain a common vision: peace, justice, freedom and dignity for all people. Because we advocate for public policies that ensure battered women the right to equal protection and the right to travel across state lines to avoid stalking and further abuse, the YWCA of the U.S.A. supports the position taken in the amicus curiae brief.

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Supreme Court, U.S.  
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1994

ELOISE ANDERSON, individually and in her official capacity as  
Director, California Department of Social Services;  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; and  
RUSSELL S. GOULD, Director, California Department of  
Finance,

*Petitioners,*

—v.—

DESHAWN GREEN; DEBBY VENTURELLA; and DIANA P.  
BERTOLLT, on behalf of themselves and all others similarly  
situated,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF AMICUS CURIAE OF THE  
NATIONAL WELFARE RIGHTS AND REFORM  
UNION IN SUPPORT OF RESPONDENTS**

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No. 94-197

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

ELOISE ANDERSON, individually and in her official  
capacity as Director, California Department of Social  
Services; CALIFORNIA DEPARTMENT OF SOCIAL  
SERVICES; and RUSSELL S. GOULD, Director, California  
Department of Finance,  
Petitioners,

v.

DESHAWN GREEN; DEBBY VENTURELLA; and  
DIANA P. BERTOLLT, on behalf of themselves and all  
others similarly situated,  
Respondents.

On Writ of Certiorari  
To The United States Court of Appeals  
For The Ninth Circuit

BRIEF AMICUS CURIAE OF THE  
NATIONAL WELFARE RIGHTS AND REFORM UNION  
IN SUPPORT OF RESPONDENTS

INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, the National Wel-  
fare Rights and Reform Union (NWR&RU) respectfully  
submits this brief amicus curiae in support of Respondents.

Written consent to the filing of this brief has been granted by counsel for all parties. Copies of the letters of consent have been filed with the Clerk of this Court.

NWR&RU is a national association of low income groups that advocates for a just and humane welfare system. Each member organization of NWR&RU is comprised of current or former welfare recipients and other low income individuals. Volunteers from these groups serve as officers of and advisors to the national organization.

NWR&RU's interest in this case stems from its opposition to welfare policies, in California and elsewhere, that discriminate against new residents. NWR&RU believes that such discrimination makes its members and other poor people second class citizens by threatening their ability to exercise their constitutional right to migrate freely between states.

### STATEMENT OF THE CASE

This case is a constitutional challenge to California Welfare and Institutions Code § 11450.03 (the "Statute"). This Statute reduces the level of Aid to Families with Dependent Children (AFDC) benefits for new California residents during their first year in California to the level in their state of prior residence.

#### The AFDC Program

AFDC is the national welfare program for needy families with children which was established by the Social Security Act of 1935. Although not required to participate, all states have chosen to establish AFDC programs. The federal government reimburses each state at least 50% of

the amount expended for benefits and administration under the state's program. In return for the federal funds, a state must operate its AFDC program in accordance with the requirements of the AFDC statute, 42 U.S.C. §§ 601-87, and the implementing regulations of the federal Department of Health and Human Services (HHS), which supervises and regulates state AFDC administration.

The monthly benefit level for an eligible family is established by the state in which the family resides. For a family of three, the average family size,<sup>1</sup> the monthly benefit level in the contiguous states in January 1994 ranged from the low of \$120 in Mississippi to the high of \$703 in New York State's Suffolk County, with a median of \$366.<sup>2</sup> *Overview, supra* at 366-67.

In California, the maximum payment for a family of three was \$607 in January 1994. This amount was higher than the typical benefit level in all but four states. In thirteen states the benefit level was less than half of the California amount, and in six states less than a third of the California amount. *Id.*

Most AFDC recipients qualify for a nutritional supplement from the Food Stamp program, a program which provides food coupons to those with a cash income which

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<sup>1</sup> Three quarters of AFDC families include one or two children and the average family size is 2.9. Staff of House Comm. on Ways and Means, 103d Cong., 2d Sess., *Overview of Entitlement Programs*, 401 (Comm. Print 1994) [hereinafter, *Overview*].

<sup>2</sup> In New York State the benefit level varies by region, with \$577 the level in New York City. *Overview, supra* at 366.



federal standards deem insufficient for nutritional adequacy.<sup>3</sup> In January 1994, the combined benefit from AFDC and Food Stamps was below the poverty level in all of the contiguous states. *Id.* at 366-67.

#### Recent AFDC Caseload Growth And Benefit Level Cuts

The national AFDC caseload grew only slowly from 1982 to 1988, but from 1989 to 1993 the average monthly number of cases increased 32% to five million cases, about 5.5% of the national population. *Overview, supra* at 395. All but two states experienced some increase from 1989 to 1993, and in many states the increases were very large, with the caseloads actually more than doubling in two states. In California the caseload increased 42%. *Compare* HHS, Family Support Administration, *Characteristics and Financial Circumstances of AFDC Recipients: FY 1989* 19 with HHS, Administration for Children and Families, *Overview of the AFDC Program, Fiscal Year 1993* 6. This rapid growth apparently resulted largely from the combined effect of the 1990-91 recession and an increase in the number of single parent families.<sup>4</sup> The rapid growth now ap-

<sup>3</sup> The maximum food coupon allotment, \$295 for a family of three in the contiguous states in fiscal year 1994, *Overview, supra* at 769, is generally reduced \$.30 for \$1.00 of countable income, including AFDC benefits, because the program's rules treat thirty cents of each countable dollar as available for food. Some families receiving AFDC who are sharing housing with others do not qualify for the Food Stamp program.

<sup>4</sup> According to a Congressional Budget Office analysis, the strong economy during 1983-88 in large part counteracted demographic factors that would have otherwise been expected to increase AFDC caseloads, while the weakness of the economy leading up to, during, and after the 1990-91 recession worked in tandem with demographic factors to create large increases in caseloads. Congressional Budget Office, Staff Memo-  
(continued...)

pears to be over.<sup>5</sup>

As caseloads increased, many states froze AFDC benefit levels and California and several other states cut them. Nationwide, between 1989 and 1993 the average monthly benefit payment per family fell 15% in constant 1993 dollars. *Overview, supra* at 378. In California, the \$694 maximum payment for a family of three in January 1990 was cut several times, and by January 1994 had been reduced to \$607. *Id.* at 375.

Due to benefit cuts, the percentage increase in real AFDC expenditures from 1989 to 1993 was far less than the percentage increase in the caseload. In constant 1993 dollars, the \$25.2 billion national AFDC expenditure in 1993 was 10% higher than in 1989, and the \$5.9 billion state and federal expenditure on AFDC benefits in California in 1993 was 13% higher than in 1989. *Overview, supra* at 389, 396, 1213. The \$13.8 billion federal AFDC expenditure was about 1% of the \$1.4 trillion total federal spending in 1993. *Overview, supra* at 389, 1271. Total state spending for AFDC benefits, including federal funds spent by the States, was expected to be 3.4% of all state spending in 1993. National Association of State Budget Officers, *1993 State Expenditure Report* 79 (March 1994).

<sup>4</sup> (...continued)

randum, *Forecasting AFDC Caseloads with an Emphasis on Economic Factors*, 4, 18 (July 1993).

<sup>5</sup> The AFDC growth rate dropped sharply by the first quarter of 1993. *Id.* 1. Earlier this year HHS projected that the caseload would increase a total of 10% between 1994 and 1999. *Overview, supra* at 395.



## Recent Attempts By California And Other States To Reduce AFDC Benefits For New Residents

The California Statute challenged in this case was enacted in 1992, and later that year California began implementation after requesting and receiving from HHS waivers of federal AFDC requirements which would otherwise block the Statute's implementation.<sup>6</sup> The district court held the Statute unconstitutional, *Green v. Anderson*, 811 F.Supp. 516 (E.D. Cal. 1993), and the Court of Appeals summarily affirmed, *Green v. Anderson*, 26 F.3d 95 (9th Cir. 1994).

California is but one of five states that in the period of rapid caseload growth in the early 1990's requested waivers to allow reductions in AFDC benefits for new state residents during their first year of residence to the level in their state of prior residence.<sup>7</sup>

Wisconsin enacted its multi-tier benefit level scheme in 1991 and in July 1992 received HHS permission to operate the scheme in selected counties. A constitutional challenge is pending. *V.C. v. Whitburn*, Civil Action No. 94-C-1028 (E.D. Wis. filed Sept. 13, 1994). Illinois, Iowa, and Wyoming all applied to HHS in 1992 or 1993 for waivers to

<sup>6</sup> Section 1115(a) of the Social Security Act, 42 U.S.C. § 1315(a), provides that the Secretary of HHS may waive a state's compliance with various provisions of the Act, "to the extent and for the period he finds necessary to enable such State . . . to carry out" an "experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of" the Act.

<sup>7</sup> The other four states are Wisconsin, Illinois, Iowa, and Wyoming. The texts of the statutes in Wisconsin, Illinois, and Iowa are set out in the Appendix. There is no statute in Wyoming providing specific authorization.

implement similar multi-tier schemes. After the district court's decision in this case, Iowa withdrew its request, and HHS denied the Illinois request on August 3, 1993, and the Wyoming request on September 1, 1993,<sup>8</sup> citing the questionable constitutionality of the provisions, and stating that it would not authorize additional multi-tier schemes "[u]ntil the matter is resolved".<sup>9</sup>

If this "matter is resolved" by this Court finding the California Statute constitutional, additional states will likely seek to reduce AFDC benefits for newer residents, if not deny them totally. Some might seek to limit benefits for periods longer than twelve months.

It is impossible to be sure how many families' benefits could be affected if limitations on benefits for newer residents again became widespread in AFDC. There is uncertainty about the form such limitations might take, and insufficient data on length of residence prior to AFDC application. However, some evidence suggests that approximately 80,000 families a year have resided in their state less than twelve months prior to the opening of their AFDC case. A recent study estimates that 77,000 women moved to another state and received AFDC in 1988. Russell L. Hanson and John T. Hartman, *Do Welfare Magnets Attract?* University of Wisconsin, Institute for Research on Poverty, Discussion

<sup>8</sup> See HHS, Administration for Children and Families, *Welfare Reform: Section 1115 Waiver Authority* (November 14, 1994).

<sup>9</sup> In a letter dated July 30, 1993, to the State of Illinois, Laurence J. Love, Acting Assistant Secretary for Children and Families, HHS, stated, "Serious issues regarding the constitutionality of this provision have arisen, and are currently being litigated. Until the matter is resolved, we are not authorizing further research in this area." This letter has been lodged with the Clerk of this Court, in a set of materials regarding state waiver applications.

Paper No. 1028-94 at 20 (February 1994). A similar estimate of 79,000 such families results if one assumes the same annual rate of interstate migration for eligible AFDC applicants as for single mother families generally.<sup>10</sup>

### SUMMARY OF THE ARGUMENT

The Constitution guarantees to all Americans the right to travel to and settle in their state of choice. The California Statute suffers from the same constitutional infirmity as the statutes this Court struck down in *Shapiro v. Thompson*, 394 U.S. 618 (1969), because it denies new residents "the very means to subsist" which the State provides to longer term residents.

A state may not attempt to prevent needy families from settling in the state. The record demonstrates that this is the primary objective of the California Statute. Moreover, the experience in other states demonstrates that this is always the aim of AFDC statutes which discriminate against new residents.

California raises the specter of waves of indigent newcomers traveling to California to take advantage of its welfare benefits and suggests that this is somehow relevant to this Court's legal analysis. States, however, may not

<sup>10</sup> The most recent relevant Census Bureau report indicates that 3.3% of single mother families had moved between states within the last twelve months when surveyed in 1991. U.S. Department of Commerce, Bureau of the Census, No. P20-473, *Geographical Mobility: March 1991 to March 1992*, 29 (1993). 2.4 million AFDC cases were opened in 1993. HHS, Office of Family Assistance, *Quarterly Report on State-Reported Data on Aid to Families with Dependent Children* 95 (May 1994).

lawfully attempt to discourage migration of that subset of newcomers who seek public support. In any case, recent studies contradict the claim that above average AFDC benefits have a strong effect on interstate migration.

Because the purpose of the California Statute is to deter migration between states and because it draws a distinction which penalizes and deters interstate travel, it is subject to strict scrutiny and could be justified only by a compelling state interest. The only permissible interest asserted by the State--saving money--is not compelling. Even if the Statute were not subject to strict scrutiny, it would be unconstitutional under a rational basis test.

### ARGUMENT

#### I. THE FREEDOM TO TRAVEL IS A FUNDAMENTAL RIGHT AND THIS COURT'S DECISION IN *SHAPIRO V. THOMPSON* COMPELS THE CONCLUSION THAT THE CALIFORNIA STATUTE IS UNCONSTITUTIONAL

##### A. Plaintiffs' Freedom To Move To California Is Protected As A Fundamental Constitutional Right.

It has long been established that the Constitution protects the right of every citizen to travel freely from state to state and to settle in the state of his or her choosing. See, e.g., *United States v. Guest*, 383 U.S. 745, 757 (1966) (The right to travel from state to state "occupies a position fundamental to the concept of our Federal Union."); *Kent v. Dulles*, 357 U.S. 116, 126 (1958); *Baldwin v. Seelig*, 294 U.S. 511, 523 (1935); *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869); *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 48-49 (1867).



The fundamental nature of the freedom to travel under our Constitution is matched by the central importance internal migration has had in the actual lives of Americans since the country's earliest days. Alexis de Tocqueville, writing in 1834, noted the American propensity to move onward:

[I]n the United States a man builds a house in which to spend his old age, and he sells it before the roof is on; he plants a garden and lets it just as the trees are coming into bearing; he brings a field into tillage and leaves other men to gather the crops; he settles in a place, which he soon afterwards leaves to carry his changeable longings elsewhere. . . .

de Tocqueville, *Democracy in America*, vol. 2 (Vintage Books 1945 [1834]) 144-45.

Today mobility continues its central importance. More than seven million Americans, 3% of the population, change their state of residence each year. U.S. Department of Commerce, Bureau of the Census, *Geographical Mobility: March 1991 to March 1992*, Report No. P20-473 at VIII (November 1993). Nearly one-third of native born Americans of all ages were residing outside of their state of birth at the time of the 1980 census. Larry Long, *Migration and Residential Mobility in the United States* 29 (National Committee for Research on the 1980 Census 1988). Children born today can be expected to move from one state to another an average of 1.71 times over their lifetime. *Id.* at 302.

The families whose rights are at issue before this Court have therefore done exactly what millions of Americans have done throughout our history: they have moved in search of a better environment for themselves and their

children, new economic opportunities, and the chance to create a new life in a new place. In so doing they are exercising a basic right protected by the Constitution.

**B. The California Statute Is Indistinguishable Under The Constitution From The Statutes Held Unconstitutional In *Shapiro v. Thompson*.**

This Court has already definitively settled the question presented to it in this case. When a state statute penalizes the exercise of the right to travel by denying new residents for a period of one year a welfare benefit that provides the "necessities of life," *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 259 (1974) (quoting *Shapiro v. Thompson*, 394 U.S. 618, 627 (1969)), it is unconstitutional. The Court's cases identify at least two welfare benefits that provide "necessities of life": AFDC (*Shapiro*) and medical care (*Memorial Hospital*). The lone dissenter in *Memorial Hospital* also acknowledged that the denial of AFDC benefits amounts to a "virtual denial of entry" because they provide "'the very means by which to live.'" 415 U.S. at 285 (Rehnquist, J., dissenting) (quoting *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970)).

In *Shapiro*, this Court held that the Constitution forbids states to deny to new residents the AFDC benefits that are provided to longer term residents. California attempts to distinguish its Statute from the statutes struck down in *Shapiro* by claiming that its Statute is different because, rather than completely denying AFDC benefits to new residents, it only reduces the benefits available to them. This attempt is unsuccessful.

First, it is not true that all of the statutes at issue in *Shapiro* completely denied benefits to new residents. Connecticut and Pennsylvania provided "temporary, partial



assistance . . . to some new residents." *Shapiro*, 394 U.S. at 635. Second, the controlling factor in *Shapiro* was not whether the denial of assistance was total; it was whether the denial deprived families of benefits needed "to obtain the very means to subsist--food, shelter, and other necessities of life." 394 U.S. at 627. There can be no doubt that by providing Plaintiffs with grants that are hundreds of dollars less per month than the already parsimonious full California grant the State is denying these families "the very means to subsist."

Thus, *Shapiro* controls this case and the California Statute should be held unconstitutional.

## II. THE CALIFORNIA STATUTE HAS THE IMPERMISSIBLE OBJECTIVE OF DETERRING POOR FAMILIES FROM SETTLING IN THE STATE

### A. This Court's Precedents Establish That A State Cannot Lawfully Attempt To Prevent Poor People From Settling In The State.

Laws which seek to inhibit interstate migration are virtually per se unconstitutional. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903 (plurality), 920-22 (dissent) (1986); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 620 n.9 (1985); *Zobel v. Williams*, 457 U.S. 55, 62 n.9 (1982); *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 264 (1974); *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969); *See also Edwards v. California*, 314 U.S. 160 (1941).

The objective of deterring settlement in the state is no less invidious when it is poor people the state seeks to exclude. In *Edwards*, *supra*, Justice Douglas, joined by

Justices Black and Murphy in concurrence, explained why a state cannot single out and exclude the poor and needy:

[T]o allow such an exception to be grafted on the rights of *national* citizenship would be to contravene every conception of national unity. It would also be to introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity.

314 U.S. at 181 (emphasis in original). *See also id.* at 185 (Jackson, J., concurring).

The principle that a state cannot erect purposeful barriers to the settlement of poor people of course extends to those who may need public assistance, as this Court affirmed in *Shapiro*:

We do not doubt that the one-year waiting period device is well suited to discourage the influx of poor families in need of assistance. . . . But the purpose of inhibiting migration by needy persons into the state is constitutionally impermissible.

394 U.S. at 629-30. *See also Memorial Hospital*, 415 U.S. at 263-64.

Some amici suggest that deterring those who seek

higher AFDC benefits is a permissible purpose.<sup>11</sup> However, the Court has already rejected this notion:

. . . a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally. . . . [W]e do not perceive why a mother who is seeking to make a new life for herself and her children should be regarded as less deserving because she considers, among other factors, the level of a State's public assistance.

*Shapiro*, 394 U.S. at 631.

This principle was reiterated in *Memorial Hospital*, which added:

An indigent who considers the quality of public hospital facilities in entering the State is no less deserving than one who moves into the State in order to take advantage of its better educational facilities.

415 U.S. at 264. In dissent, then-Justice Rehnquist also acknowledged that an "effective and purposeful attempt to insulate the State from indigents" is constitutionally infirm. *Id.* at 283 (Rehnquist, J., dissenting).

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<sup>11</sup> See Brief amicus curiae of the Mountain States Legal Foundation et al. 5-6; Brief amicus curiae of the Pacific Legal Foundation 5. California acknowledges that a purposeful attempt to exclude indigent newcomers would be unconstitutional, but raises the specter of waves of indigents traveling into California to take advantage of the State's welfare benefits and suggests that this is relevant to this Court's legal analysis. Petitioners' Brief on the Merits 21. The four state amici make a similar argument. Brief amicus curiae of Minnesota et al. 9.

Moreover, even if the objective of deterring migration by those who might seek a higher welfare grant were permissible, it could not justify the California Statute because the Statute irrationally treats all families who need AFDC in their first year of residence as if they came to the State to obtain a higher AFDC grant. Just as in *Shapiro*,

[T]he class of barred newcomers is all-inclusive, lumping the great majority who come to the state for other purposes with those who come for the sole purpose of collecting higher benefits. In actual operation, therefore, the three statutes enact what are in effect nonrebuttable presumptions. . . .

394 U.S. at 631. One need only look to the record in this case to conclude that this presumption is insupportable.<sup>12</sup>

#### **B. The Undeniable Objective Of The California Statute Is To Deter Settlement Of Poor People In The State.**

The California Statute denies benefits to families equally needy, equally qualified and otherwise identically situated to those who receive full aid save in one respect: they have recently left one state and settled in another. As the district court observed, by providing for lower benefits for newcomers the statute's very structure suggests a goal of deterrence. See *Green*, 811 F.Supp. at 522 n.14.

That the Statute varies the amount of the reduction for newer residents based on the benefit in their prior state of residence further evidences its inherent aim to deter. A multi-tier scheme of variably reduced benefits based on prior state of residence can have no other objective. In-

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<sup>12</sup> Each of the Plaintiffs left her prior state of residence to escape abuse, and went to California where she had family. JA 71-72, 75, 78.



deed, neither the State nor any of the amici supporting the State has even been able to suggest an objective that explains the Statute's variable reduction feature.

The record in this case is replete with evidence that the Statute was passed in order to discourage poor families from settling in California. *See, e.g.*, JA at 20, 24, 31-42, 44, 48, 50, 61, 99, 100-01. Despite its circumlocution, the State's claim that the Statute merely "removes California's relatively high AFDC benefit levels, for a period of one year, as one of the factors a person might consider when contemplating a move to California," Pet. Br. at 21, implicitly admits this purpose. It is contemplated that some people will consider that the full AFDC benefit is not available to them due to the Statute and as a result choose not to move to California.

### C. Experience In Other States Further Evidences That The Aim Of The Statute And Others Like It Is Always To Deter Migration.

In recent years, Wisconsin, Illinois, Iowa, and Wyoming have also implemented or sought to implement multi-tier schemes reducing AFDC benefits for new residents to the level in the state from which they came.<sup>13</sup> *See State-*

<sup>13</sup> As noted in the Statement of the Case, after the district court decision in this case, HHS denied Illinois' and Wyoming's waiver requests citing the questionable constitutionality of the provisions, and Iowa withdrew its request. In recent years, Minnesota, New York, Pennsylvania, and Wisconsin have enacted durational requirements for newcomers in their General Assistance (GA) programs. Each state provision faced or is currently facing court challenge. *See Warrick v. Snider*, Civil Action No. 94-1634 (W.D. Pa. amended complaint filed Sept. 30, 1994); *Mitchell v. Steffen*, 504 N.W.2d 198 (Minn. 1993), *aff'g* 487 N.W.2d 896 (Minn. Ct. App. 1992), *cert. denied*, 114 S.Ct. 902 (continued...)

ment of the Case, *supra* p. 6. The legislative and administrative history of the provisions in these states provides further support for the conclusion that the purpose of multi-tier schemes is always to deter poor people from migrating to the state.

The Wisconsin statute expressly provides that the evaluation of its scheme shall determine "whether the demonstration project deters persons from moving to this state." Wis. Stat. § 49.19(11m)(e). Wisconsin's waiver application introduces its subject matter with a lengthy excerpt from a speech by Governor Wilson of California, condemning the "exploding" growth in welfare spending in that state and attributing it to newly arrived welfare recipients. Wisconsin Department of Health and Social Services, Application for Federal Assistance: "Two-Tier AFDC Benefit Demonstration Project" 2-3 (June 26, 1992).<sup>14</sup> Wisconsin is portrayed as facing a similar crisis. The proposal for a multi-tier scheme in selected parts of the state is based upon the "intuitive conclusion that the differential in benefits is inducing families to move to Wisconsin in search of higher benefits." *Id.* at 5. The first "hypothesis" of the project is that,

[I]n counties where the two-tiered policy is implemented, there will be a reduction in the percentage of new AFDC recipients who previously resided in

<sup>13</sup> (...continued)  
(1994); *Aumick v. Bane*, Index No. 2881/93 (N.Y. Sup. Ct. 1994); *Jones v. Milwaukee County*, 485 N.W.2d 21 (Wis. 1992).

<sup>14</sup> Ten copies of a packet of materials regarding state waiver applications have been lodged with the Clerk of this Court. The packet contains copies of the Wisconsin, Illinois, Iowa and Wyoming waiver applications and related materials.



a state other than Wisconsin, when compared to the non-demonstration counties for the same time period. . . .

*Id.* at 26. This "hypothesis" reveals the project's objective: to generate the projected effect by deterring migration.

The waiver applications of Illinois, Iowa, and Wyoming each describe the purpose in seeking to implement a multi-tier scheme as being to "reduce the incentive" for families to move to the state.

Illinois' waiver application hypothesized that its scheme would result in "a lower percentage of the Illinois AFDC caseload that received AFDC from other states in the year prior to moving to Illinois" and a resulting "savings." Illinois Department of Public Aid, Application for Federal Assistance: "Relocation to Illinois Project" 7 (October 1, 1992). The sponsor of the provision in the Illinois legislature agreed that the measure was aimed at preventing the State from "becoming a welfare magnet." *Transcription Debate*, State of Illinois, 87th General Assembly, House of Representatives, 167th Legislative Day at 6 (July 30, 1992). Another legislator questioned the measure's constitutionality, but supported its objective: "while . . . it seems to make sense that we should try to prohibit people from other states coming into Illinois to get larger benefits, it appears very clear that this is unconstitutional." *Id.* at 1.

Iowa's waiver application bluntly declared that: "The [multi-tier] proposal would reduce the incentive for families to move to Iowa for the purpose of receiving Iowa's higher public assistance grants." Iowa Department of Human Services, Application for Federal Assistance: "Iowa Family Investment Program" 75 (April 17, 1993). One state legislator explained, "With all the empty houses in southern

Iowa, many out-of-state recipients move to Iowa to get the higher rate." *Mail Call*, Sumner Gazette, October 8, 1992 (Letter from Ray Lageschulte, Iowa State Representative).

Wyoming's waiver application announced that the purpose of the multi-tier benefit scheme was to "reduce the incentive for families to move to Wyoming to receive public assistance." Wyoming Department of Family Services, Application for Federal Assistance: "Wyoming Relocation Grant" 1 (December 24, 1992). The State continued:

This project would demonstrate the effectiveness of a proposal which is intended to discourage clients to move to Wyoming for a higher public assistance grant.

*Id.* Throughout its application Wyoming speaks of "reducing the incentive" to migrate, and "discouraging" migration, interchangeably as project goals.

No state has yet evidenced a purpose for a multi-tier AFDC durational residency statute other than to achieve the goal that is self-evident from the structure of the provisions: to deter in-migration by needy families.

### III. RECENT STUDIES CONTRADICT THE "WELFARE MAGNET" HYPOTHESIS

California and the four State amici suggest that social science research has established that large numbers of families migrate from one state to another to increase their AFDC benefits. They also suggest that this Court should depart from its holding in *Shapiro* on the ground that durational residency requirements are necessary to protect state budgets from an influx of new indigent residents seeking

higher welfare benefits. Pet. Br. at 21, Minnesota et. al. Br. at 9. There is no basis for these claims.

California and amici cite but one study in support of this "welfare magnet" thesis, Paul E. Peterson and Mark C. Rom, *Welfare Magnets* (1990).<sup>15</sup> That study analyzed poverty rates, not migration rates, and found that poverty rates tended to rise over time in states with above-average AFDC benefit levels. Based on these findings, the authors claimed "proof" that AFDC benefits had a magnetic effect.

This logic is flawed. Changes in state poverty rates (number poor/total population) can be due to any number of factors, and may have nothing whatsoever to do with interstate migration. As a recent study of the "welfare magnet" issue explained:

Peterson and Rom do not actually show that poor people migrate to high benefit states, let alone that migrants move in order to receive better benefits. Indeed, they cannot, given their reliance on aggregate data . . . . The logical pitfalls of this approach are obvious. The same outcome could be the result of any number of decision-making processes, some of them not even involving the behavior of poor people.

Russell L. Hanson and John T. Hartman, *Do Welfare Mag-*

<sup>15</sup> California suggests that Peterson and Rom at page 58 credit two earlier studies with having shown that "the effect of welfare benefits on migration is strong and significant." Pet. Br. at 21. In fact, Peterson and Rom at page 58 criticize those earlier studies and conclude that "each study has limitations that leaves the issue unresolved". The two 1994 studies discussed below in this brief also criticized both of those earlier studies.

*nets Attract?* University of Wisconsin, Institute for Research on Poverty, Discussion Paper No. 1028-94 at 5 (February 1994).<sup>16</sup>

This same study analyzes Census Bureau data on interstate migration by low income women and finds no evidence of "welfare magnets":

The Current Population Surveys supply a firm foundation for gauging the magnetic effects of high welfare benefits, and our results show that policymakers' fear of being overrun by poor migrants are groundless. We find no evidence that poor women are attracted to high benefit states by the possibility of receiving more assistance. . . . [T]he welfare magnet hypothesis is not sustained by data on the behavior of poor individuals. . . . Consequently, state policymakers' efforts to restrict access to welfare are unnecessary (and unnecessarily harmful to those whose subsistence depends on welfare).

Hanson and Hartman, *supra* at 26. Hanson and Hartman also estimate that 77,000 low income women moved to

<sup>16</sup> Another recent study of the welfare magnet issue is similarly critical: "Indeed, the standards of evidence have been so low that it is common practice for studies to find 'evidence' of welfare magnets without using data on migration rates (e.g. Peterson and Rom [1990])!" James R. Walker, *Migration Among Low-Income Households: Helping the Witch Doctors Reach Consensus*, University of Wisconsin, Institute for Research on Poverty, Discussion Paper No. 1031-94 at 1 (April 1994). A summary overview of "welfare magnet" studies, written after Peterson and Rom but before the two 1994 studies discussed in this brief, said "the available research has proven inconclusive." Robert Moffitt, *Welfare Reform: An Economist's Perspective*, 11 Yale Law and Policy Review 126, 137 (1993).



another state and received AFDC in 1988.<sup>17</sup> *Id.* at 20. This figure includes those who moved to states where benefits were lower, and is a minute fraction of the total AFDC caseload.

A second recent study reaches a conclusion similar to Hanson and Hartman:

The data offer no compelling evidence in support of the welfare magnet hypothesis. Migration propensities are as likely to invalidate as they are to support the welfare magnet hypothesis. Moreover, none of the estimated effects of welfare benefits are statistically significant at conventional levels.

Walker, *supra* at 47-48.

The conclusion that above average AFDC benefit levels have no large attractive effect on interstate migration is consistent with the Census Bureau data on regional migration patterns for the poor and non-poor between the late 1960's and the mid 1980's.<sup>18</sup> Poor people migrated in the same general directions as the rest of the population. Just as for the rest of the population, the net migration of poor people was out of the "rustbelt" - the Northeast and the Midwest - and into the "sunbelt" - the South and the West.

<sup>17</sup> Hanson and Hartman found that 0.7% of the low income women of child bearing age sampled in the Census Bureau's annual Current Population Surveys from 1982-84 and from 1986-88 had moved to another state and received AFDC in the twelve months preceding the survey. They then applied this percentage to the total number of poor women of child bearing age in 1988, to derive the figure of 77,000.

<sup>18</sup> The Census Bureau annual mobility reports ceased providing data on movers classified by poor/nonpoor status after the report for March 1986 to March 1987.

See Larry Long, *Migration and Residential Mobility in the United States* 159-62 (National Committee for Research on the 1980 Census 1988).

The migration of poor people into the South is particularly noteworthy. Almost all of the seventeen states which the Census Bureau classifies as the "South" have traditionally had below average benefit levels.<sup>19</sup> For example, in January 1994 these seventeen states included the ten states with the lowest AFDC benefits for a family of three, and only two states where the benefit was above the median. *Overview, supra* at 375-77. One would not expect this pattern of migration if the "welfare magnet" hypothesis were valid.

#### IV. THE CALIFORNIA STATUTE FAILS BOTH THE APPLICABLE STRICT SCRUTINY TEST AND A RATIONAL BASIS ANALYSIS

##### A. The Statute Is Subject To Strict Scrutiny.

A statute which treats new residents disparately is subject to strict scrutiny when it "[1] actually deters travel . . . [2] when impeding travel is its primary objective . . . or [3] when it uses any classification which serves to penalize the exercise of that right." *Soto-Lopez*, 476 U.S. at 903 (citations and internal quotations omitted); *accord id.* at 920-21 (dissent). See *Memorial Hospital*, 425 U.S. at 256-

<sup>19</sup> The Census Bureau "South" includes: Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. U.S. Department of Commerce, Bureau of the Census, No. P20-473, *Geographical Mobility: March 1991 to March 1992* A-2 (1993).



58; *Shapiro*, 394 U.S. at 634; *see also id.* at 643-44 (Stewart, J. concurring) (Whenever an intent of a statute is to deter migration, "any *other* purposes offered in support [of the statute] . . . must be shown to reflect a *compelling* governmental interest.") (emphasis in the original).

In this case, the Statute penalizes the right to travel, as demonstrated in Section I, *supra*, by denying new residents "the very means to subsist" which are provided to other residents, and its objective, as shown in Section II, *supra*, is to deter poor families from migrating to California. Furthermore, it cannot seriously be doubted that, if allowed to enforce the Statute, California will succeed in deterring from moving to and settling in the State some families who will fear being forced into destitution and homelessness by the Statute if they should need AFDC during their first year of residence. Thus, because any of these factors triggers strict scrutiny, the California statute is unconstitutional unless it can be justified by a compelling state interest.

#### **B. Paying Lower Benefits To New Residents Serves No Compelling State Interest.**

The only permissible interest asserted by California as justifying its Statute is an interest in cutting its welfare costs.<sup>20</sup> This Court has repeatedly held that a state's interest in protecting the public fisc, while legitimate, is not compelling. In *Shapiro*, the Court recognized that "a state

<sup>20</sup> California alludes to the Statute's status as part of an AFDC demonstration project and asserts that studying the effects of the Statute would provide useful information for future policy decisions. Pet. Br. at 18-19. Because the aim the experiment seeks to achieve—deterring poor people from settling in California—is constitutionally impermissible, the assertion that it would produce useful data does not provide a legitimate purpose for the statute.

has a valid interest in preserving the fiscal integrity of its programs," yet held that:

[A] state may not accomplish such a purpose by invidious distinctions between classes of its citizens. . . . [A]ppellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification.

394 U.S. at 633 (footnote omitted). *Accord Memorial Hospital*, 415 U.S. at 263.

#### **C. The Statute Fails Even A Rational Basis Test.**

Although the Court's precedents dictate the application of the strict scrutiny analysis of *Shapiro* and its progeny in this case, the conclusion that California's statute is unconstitutional would be inescapable even under the least restrictive test employed under the Equal Protection Clause, which asks whether a distinction between new and established residents "rationally furthers a legitimate state purpose." *Zobel v. Williams*, 457 U.S. 55, 60 (1982). As four Justices concurring in *Zobel* pointed out, the "instances in which length of residence could provide a legitimate basis for distinguishing one citizen from another are rare." 457 U.S. at 70 (Brennan, J., concurring). On more than one occasion, this Court has found that state distinctions between new and other residents were unconstitutional because they failed even this minimal test. *Hooper v. Bernalillo County*, 472 U.S. 612 (1985); *Zobel, supra*; *see also Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 912 (1986) (Burger, C.J., concurring).

California claims that its interest in reducing welfare costs is sufficient to justify the disparate treatment of new

and longer term residents in its Statute. Pet. Br. at 18-23. Even under a rational basis test, however, California must do more than demonstrate the obvious proposition that reducing benefits to a group of its citizens reduces its overall welfare spending. It must explain why it is rational to place the burden of cutting welfare costs disproportionately on new residents. See *Hooper*, 472 U.S. at 621; *Zobel*, 457 U.S. at 61-62; *Shapiro*, 394 U.S. at 637-38 (Because there is no reason that the purpose should not apply equally to longer term residents, "[a] state purpose to encourage employment provides no rational basis for imposing a one-year waiting-period restriction on new residents only.") California makes no effort to provide a rationale for disproportionately burdening new residents.

The Washington Legal Foundation, et al., attempt to supply the missing rationale by asserting that new residents are better able to adjust to lower benefit levels than longer term residents and that longer term residents have a reliance interest in a particular level of AFDC benefits that new residents do not have. Brief amicus curiae of the Washington Legal Foundation et al. (WLF Br.) at 9-12. Neither of these post hoc, third-party rationales withstands analysis. Furthermore, the fact that new residents are not the cause of the recent increase in California's AFDC caseload further highlights the irrationality of singling them out to bear a disproportionate share of California's welfare cuts.

### 1. The Needs Of New Residents Are No Less Than Those Of Others.

The assertion that new residents need less defies both common sense and available evidence regarding the relative costs of living of newcomers and more established residents. As anyone who has ever moved is well aware, there are unavoidable costs associated with moving and establish-

ing a new residence that those who do not move do not incur. These typically include at a minimum payment of security deposits and hook up costs for telephones and other utilities. Newcomers like the Plaintiffs who are fleeing abusive relationships may arrive in their new state with little more than the clothes on their backs, and may therefore have substantial additional costs for new furniture and clothing for themselves and their children. Furthermore, new renters generally pay significantly higher rents than renters who are already in place. See U.S. Department of Commerce, Bureau of the Census, *Metropolitan Housing Characteristics (1990 CH-3-1)* 5 (December 1993).

The Washington Legal Foundation, et al., claim that newcomers are better able to "adjust to cuts through their choice of communities and lifestyles." WLF Br. at 10. Again, the Plaintiffs provide instructive examples of why this is not so. Each moved to California to be close to relatives who they hoped could provide them with emotional support and protection from the abusive partners they were fleeing. JA 71, 75, 80. There is no reason to believe that the Plaintiffs know others in California who could play the same role for them.

Even if it were possible to show that new residents are better able to bear the hardships of lower AFDC grants than others, the Statute would still be irrational because of its disparate treatment of new residents based on their previous states of residence. It is inconceivable that someone who previously lived in Mississippi can survive in California on hundreds of dollars less per month than someone who previously lived in New York City. Moreover, the Statute does not pay lower benefits to newcomers who previously lived in states with higher AFDC benefits than California's. Because California does not and cannot claim that former residents of those states somehow lack the resiliency and



resourcefulness that would allegedly allow other new residents to adjust to lower benefits, this distinction too is irrational.

Neither can a difference in reliance interests of new and longer term residents justify the classifications drawn by the Statute. In *Nordlinger v. Hahn*, 112 S.Ct. 2326 (1992), the Court held that a provision of the California Constitution which resulted in higher property taxes for new homeowners than for those who have remained in the same home over the years was rationally justified, among other reasons, by the fact that "a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner." *Nordlinger*, 112 S.Ct. at 2333.

Even assuming that current AFDC recipients have a reliance interest in their benefits that the State could protect, this is not what the California Statute does.<sup>21</sup> Protecting all longer term residents of the State from benefit cuts is not even a close approximation of protecting current recipients. There is not a static population of AFDC recipients who have "vested expectations" in their benefit levels similar to the reliance interest of the exiting homeowners in *Nordlinger*. See WLF Br. at 12.

<sup>21</sup> Despite the argument made by amicus, California has not in recent years evidenced a concern about the reliance interests that some of its citizens may have in a particular level of AFDC benefits. In the same legislation that contained the multi-tier benefits scheme for new residents, California cut benefits to current AFDC recipients by 5.8%. Cal. Welf. & Inst. Code §§ 11450.01(a), 11450.01(b) (cutting benefits 4.5% in October 1992 and another 1.3% in December 1992). The State has in fact repeatedly cut AFDC benefit levels over the last four years. See *Overview*, *supra* at 375 (benefit for a family of three cut from \$694 in 1991 to \$663 in 1992 to \$624 in 1993 to \$607 in 1994).

To the contrary, turnover in the AFDC rolls is continuous and substantial. About 70% of families entering AFDC exit the program within twenty-four months or less according to recent studies of monthly caseload dynamics. *Overview*, *supra* at 441-42. In 1993, over 2.4 million cases were opened, and over 2.5 million were closed. HHS, Office of Family Assistance, *Quarterly Report on State-Reported Data on Aid to Families with Dependent Children*, 95, 98 (May 1994). In California, over 300,000 cases were opened and over 300,000 AFDC cases were closed in 1993. *Id.* Each year, therefore, many of those receiving the full California benefit under the Statute would be longer term Californians who had not previously received AFDC and who could not be considered to have any greater reliance interest in a particular AFDC grant level than newcomers who apply for AFDC.

## 2. The Growth In California's AFDC Caseload Has Not Been Caused By New Residents.

The irrationality of the Statute is further highlighted when one considers that new residents are not responsible for recent increases in California's caseload. Interstate migration could not have caused the increase in AFDC caseloads that was common to nearly all of the States. Rather, the AFDC caseload in California grew for the same reason it grew in forty-seven other States over the same period: the weakness of the national economy and changing demographic factors. See *Statement of the Case*, *supra* at p. 4. California has in fact witnessed a net *outmigration* of poor people in recent years through interstate migration, according to a recent analysis of data from the 1990 census. That study concluded that between 1985 and 1990 almost 50,000 more poor people left California for other states than moved to California from other states. William H.



Frey, *Immigration and Internal Migration for U.S. States: 1990 Census Findings by Poverty Status and Race*, Population Studies Center, University of Michigan, Research Report No. 94-320 (September 1994).

### CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Dated: December 12, 1994

Respectfully submitted,

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## **APPENDIX**

**APPENDIX**

Text of the Multi-Tier Durational Residency Statutes from Illinois, Iowa, and Wisconsin.

305 ILL. STAT. § 5/11-30 (1992):

Aid recipients from other states; limitations on amount of aid. Notwithstanding any other provision of this Code, if an applicant for aid under any Article of this Code has moved to this State from another state, and if the applicant received public aid in that other state under its laws that are equivalent to this Code at any time within the 12 months immediately preceding the date the applicant became a resident of this State, then during the first 12 months that the applicant resides in this State the applicant shall not be eligible to receive aid under any Article of this Code in an amount greater than the amount of comparable aid the applicant received under the laws of the state from which he or she moved to this State. The Illinois Department shall apply for all necessary federal waivers, and implementation of this Section is contingent on the Illinois Department receiving any necessary federal waivers.

IOWA S.F. 268 (1993):

...

5. If an individual received aid to dependent children in another state within one year of applying for assistance in this state the requirements of this subsection shall apply. Using the family size for which the individual's eligibility is



determined, the department shall compare the standard grant payment amount the individual would be paid in the other state with the standard grant payment amount the individual would be paid in this state. For the period of one year from the date of applying for assistance in this state, the individual's grant shall be the lesser of the two amounts. The provisions of this subsection shall not apply to an individual who was previously a resident of this state before living in another state and receiving aid to dependent children or to an individual who has moved to this state to be near the individual's parent or sibling.

WIS. STAT. § 49.19(11m):

(a) The Department shall apply to the secretary of the federal department of health and human services for approval of a demonstration project under which the department provides a person eligible for aid under this section who is described in par. (am) with monthly payments, for the first 6 months that he or she lives in the state, calculated on the basis of the aid to families with dependent children benefit level in the state in which the family most recently resided. The department shall promulgate a rule, which it shall update annually, establishing the aid to families with dependent children benefit that will be paid under the demonstration project according to family size and state of former residence. The department shall base the benefit for a family of the aid to families with dependent children benefit available to a typical family of the same size in the other state, taking into account all factors that may affect the amount of the benefit. The rule shall specify the factors that the department uses to establish the benefit for participants in the demonstration project. If a family moves from a state that allows a family to keep a different amount of income without losing

benefits than a family would be allowed to keep in this state, the department shall allow the family to keep a similar amount of income without reducing benefits.

(am) Under the demonstration project, a person is subject to receiving the payments under par. (a) if he or she has not previously resided in this state for 6 months and either:

1. Applies for benefits more than 90 days but fewer than 180 days after moving to this state and is unable to demonstrate to the satisfaction of the county department of social services that he or she was employed for at least 13 weeks after moving to this state; or
2. Applies for benefits within 90 days of moving to this state.

(b) If approval under par. (a) is granted and if the supreme court determines, within 9 months after the department notifies that attorney general that the approval has been granted, that the demonstration project does not violate either the state constitution or the U.S. constitution or the supreme court does not make a decision on the constitutionality of the demonstration project within that time, the department shall implement the project. The department may conduct the demonstration project for a period not to exceed 36 months. The department may not start the demonstration project before a computerized system for determining the amount of benefits payable to recipients under the demonstration project is complete.

(c) Subject to pars. (b) and (d), the department shall conduct the demonstration project in Kenosha county, Milwaukee county, Racine county, and up to 3 other counties. If the department does not initially select Rock county as one of the other counties and if one of the

counties specified in this paragraph or initially selected by the department enacts an ordinance or adopts a resolution under par. (d), the department shall give Rock county priority for consideration as a replacement county.

(d) The department may not conduct the demonstration project in a county if the county enacts an ordinance or adopts a resolution objecting to participating in the demonstration project.

(e) If the department conducts the demonstration project, the department shall enter into a contract with the legislative audit bureau under which the legislative audit bureau will contract with a private or public agency for the performance of an evaluation of the demonstration project, including whether the demonstration project deters persons from moving into this state, and will submit the evaluation of the demonstration project to the governor and to the chief clerk of each house of the legislature for distribution to the legislature under s.13.172(2).

DEC 13 1994

DEPT. OF THE CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1994

ELOISE ANDERSON, individually and in her  
official capacity as Director, California Department of  
Social Services; CALIFORNIA DEPARTMENT OF SOCIAL  
SERVICES; and THOMAS HAYES, Director, California  
Department of Finance,

*Petitioners,*

v.

DESHAWN GREEN; DEBBY VENTURELLA; and DIANA P.  
BERTOLLT, on behalf of themselves and all others  
similarly situated,

*Respondents.*

On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit

**BRIEF OF CATHOLIC CHARITIES U.S.A., NATIONAL  
COUNCIL OF CHURCHES IN CHRIST IN THE U.S.A.,  
AND AMERICAN JEWISH CONGRESS AS AMICI CURIAE  
IN SUPPORT OF RESPONDENTS**

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30 1994



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**In the Supreme Court of the United States**

OCTOBER TERM, 1994

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No. 94-197

ELOISE ANDERSON, individually and in her  
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v.

DESHAWN GREEN; DEBBY VENTURELLA; and DIANA P.  
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On Writ of Certiorari to the United States  
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BRIEF OF CATHOLIC CHARITIES U.S.A., NATIONAL  
COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A.,  
AND AMERICAN JEWISH CONGRESS AS AMICI CURIAE  
IN SUPPORT OF RESPONDENTS

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## INTEREST OF AMICI CURIAE

Catholic Charities U.S.A. is the nation's largest private, social service organization. Its network of 1,400 agencies and institutions serves more than 10.5 million people of all religious, national, racial, and social backgrounds each year. Catholic Charities' services emphasize enabling people to achieve self-sufficiency.

The National Council of the Churches of Christ in the U.S.A. is composed of thirty-three Protestant, Orthodox, and Anglican communions having an aggregate membership of over forty million. The National Council is governed by a board of some 260 members appointed by its member denominations in proportion to their size and support of the Council. Among the purposes of the Council is to speak out on national issues which involve moral, ethical, and spiritual principles inherent in the Christian Gospel.

The American Jewish Congress is an organization of American Jews founded in 1918 to protect the civil, political, economic, and religious rights of American Jews and all Americans. The American Jewish Congress has long believed that Americans, including the poorest members of our society, must be free to live where they will. The right to travel has special resonance for Jews, most of whose ancestors fled countries which restricted or discouraged their free movement and choice of place of residence.

These organizations join in this brief because they are concerned about the deep and pervasive problem of poverty in America and the failure of federal and state governments to provide adequately for the needy. They believe that the constitutional rights of the poor and less fortunate should be fully protected. They are concerned that private chari-

table and religious organizations, whose resources are already stretched thin, not be overwhelmed as a result of unfair and unconstitutional reductions in public assistance benefits to the indigent.<sup>1</sup>

## SUMMARY OF ARGUMENT

In 1992, California enacted a two-tier welfare benefit system under which payments to residents who have migrated to California are limited during the first twelve months of their residence in California to the benefit levels of their prior state of residence. In most cases, new residents' benefit levels are significantly lower -- in some cases, as much as 80% lower -- than the benefit levels for their fellow California residents.

The California statute discriminates among similarly situated state residents and violates the Equal Protection Clause and the Privileges and Immunities Clause of Article IV. The state penalizes new residents who have exercised their constitutional right to travel by providing them with fewer means by which to live than it provides long-term residents. Recent migrants to California are not only worse off under this statute relative to their fellow California residents, but also are in a worse position than they were in their states of prior residence because their benefits are worth less in real terms due to California's high cost of living. Under this Court's decision in *Shapiro v. Thompson*, 394 U.S. 618 (1969), this discrimination is subject to strict scrutiny under the Equal Protection Clause because it

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<sup>1</sup> Amici submit this brief in support of Respondents with the written consent of the parties. Letters of consent have been lodged with the Clerk of the Court.

penalizes the exercise of the fundamental, constitutional right of interstate travel. Neither California's interest in saving money, which is not a compelling reason, nor its interest in inhibiting migration of indigents, which is a constitutionally impermissible reason, can justify this statute.

Even if this Court employed an intermediate or lower standard of review, California's interests would not justify the undue burden the statute imposes on the right to travel freely among the states. The statute impermissibly discriminates against one class of residents even though their needs are no different from their fellow residents', and even though their contribution to California's fiscal problems is insignificant.

The California statute also violates the Privileges and Immunities Clause of Article IV, Section 2, because California's new residents are not a "peculiar source" of the fiscal crisis which supposedly motivated the statute's enactment. See *Zobel v. Williams*, 457 U.S. 55, 76 (1982) (O'Connor, J., concurring in judgment).

## ARGUMENT

### I. CALIFORNIA'S TWO-TIER WELFARE BENEFIT SYSTEM VIOLATES THE EQUAL PROTECTION CLAUSE BECAUSE IT PENALIZES THE CONSTITUTIONALLY PROTECTED RIGHT TO TRAVEL AND PROMOTES NO COMPELLING STATE INTEREST.

This case involves a California statute that generally limits Aid to Families with Dependent Children (AFDC) benefits for residents who have not resided in California

during the prior twelve months to the level they would have received in their state of prior residence. Cal. Welf. & Inst. Code § 11450.03 (West Supp. 1994) [hereinafter "California statute"]. Such new and recent residents eligible for AFDC receive either the amount of AFDC benefits that California would provide or the amount that the state from which they moved would provide, whichever is lower. Judge Levi of the Eastern District of California correctly held that the California statute violates the Equal Protection Clause, *Green v. Anderson*, 811 F. Supp. 516, 523 (E.D. Cal. 1993), and the Court of Appeals affirmed on the basis of Judge Levi's opinion. *Green v. Anderson*, 26 F.3d 95 (9th Cir. 1994).

Under the Equal Protection Clause generally, a state may not distribute benefits to its residents unequally unless the distinction between the classes of beneficiaries rationally furthers a legitimate state purpose. *Zobel*, 457 U.S. at 60. If a state distinction is aimed at a suspect class or penalizes the exercise of a constitutional right, however, strict scrutiny applies and the state's distinction must be necessary to promote a compelling governmental interest. *Shapiro*, 394 U.S. at 634; *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 262 n.21 (1974); *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985).

In *Shapiro*, the Court considered several statutes which denied some public assistance to residents who had lived in their respective states (or the District of Columbia) less than one year. The Court concluded that such durational residency requirements implicated the "fundamental right of interstate movement." 394 U.S. at 638. Because the state's primary purpose of inhibiting migration of needy persons was impermissible, and because alternative purposes such as saving money were not compelling, the



Court held that the statutes violated the Equal Protection Clause. *Id.* at 629, 638.

The Court in *Maricopa County* reaffirmed its holding in *Shapiro* when it struck down an Arizona statute which required a year's residence in a county as a condition to an indigent's receiving free non-emergency hospitalization. 415 U.S. at 269. The Court held that medical care was as much a "'basic necessity of life'" as welfare assistance, and that denying such necessities to newer state residents penalized the constitutional right to travel. *Id.* at 259 (internal citation omitted). The state interest in saving money was deemed not compelling: "a State may not protect the public fisc by drawing an invidious distinction between classes of its citizens ...." *Id.* at 263 (citing *Shapiro*). And to the extent the state was motivated by a desire to inhibit immigration of indigents, that goal was not constitutionally permissible. *Id.* at 263-64 (citing *Shapiro*). Because the state could not meet its "heavy burden" of justifying the penalty on the right to travel, the Court held that the Arizona statute violated the Equal Protection Clause. *Id.* at 269. *See also Dunn v. Blumstein*, 405 U.S. 330, 342 (1972) (state statute which required would-be voters to reside in state for one year and in county for three months furthered no compelling governmental interest and therefore violated the Equal Protection Clause).

On at least one occasion, a plurality of the Court has analyzed residency requirements under not only the Equal Protection Clause, but also directly under the right to travel. Justice Brennan, the author of *Shapiro*, concluded in writing for a plurality in *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 911 (1986), that a New York statute which provided civil service benefits to some but not all veterans residing in New York violated both the Equal Protection Clause and the right to travel. Whether

durational residency requirements such as the one imposed by California in this case are viewed as posing a question under the right to travel or the Equal Protection Clause, or both, the test is the same: a state law that discriminates against a class of citizens on the basis of their exercise of the right to travel is unconstitutional unless it can be justified by a compelling state interest that cannot be achieved by less restrictive means. *See id.*

California's durational residency requirement at issue here is no different in any significant respect than those struck down in *Shapiro* and *Maricopa County*, and the state's purpose of deterring migration or saving money is no more compelling here than it was in those cases. Because *Shapiro* and its progeny squarely govern this case, this Court should hold that the California statute violates the Equal Protection Clause.

#### A. The California Statute Penalizes the Exercise of the Fundamental Right to Travel.

This Court has long recognized, and California does not dispute, that freedom of travel is a "basic right under the Constitution." *Blumstein*, 405 U.S. at 338. The right to migrate "occupies a position fundamental to the concept of our Federal Union." *United States v. Guest*, 383 U.S. 745, 757 (1966). *See Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971) ("Our cases have firmly established that the right of interstate travel is constitutionally protected"); *Twining v. New Jersey*, 211 U.S. 78, 97 (1908).

The California statute places an obvious and heavy penalty on the exercise of the right to travel, thereby triggering strict scrutiny review. *See Shapiro*, 394 U.S. at

634. The state provides fewer of the benefits necessary for survival to California residents who lived in a different state during the preceding year than it does to long-time California residents -- even though their needs are no different.

The statute's penalty is harsh, both in degree and nature. For example, because she had recently moved from Louisiana to California, plaintiff Deshawn Green was eligible to receive less than a third of the California AFDC benefits she would otherwise receive: she was eligible only for \$190 in monthly benefits (the Louisiana level) instead of the \$624 she would have received had she been in California for a year. J.A. 72.<sup>2</sup> And these benefits are not trivial; they are "the very means by which to live." *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).<sup>3</sup>

The burden on the recipients in this case is very similar to the burden on the plaintiffs in *Shapiro*, whose AFDC

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<sup>2</sup> \$624 was the maximum aid payment available for a family of three in California in 1992, the year in which all the named plaintiffs moved to California. J.A. 68. The maximum California benefit as of January 1994 was \$607. Staff of House Committee on Ways and Means, 103d Cong., 2d Sess., *Overview of Entitlement Programs* 366 (Comm. Print 1994) [hereinafter *1994 Committee Print*].

<sup>3</sup> This Court has recognized that welfare assistance is a benefit "necessary to basic sustenance" which has "often been viewed of greater constitutional significance than less essential forms of governmental entitlements." *Maricopa County*, 415 U.S. at 259. See also *id.* at 285 (Rehnquist, J., dissenting) ("virtual denial of entry [is] inherent in denial of welfare benefits -- 'the very means by which to live'" (citing *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970))). Cf. *Starns v. Malkerson*, 326 F. Supp. 234, 238 (D. Minn. 1970) (upholding one-year residency requirement for obtaining in-state tuition and recognizing that although higher education is valuable, it cannot be equated with "food, clothing and shelter"), *aff'd*, 401 U.S. 985 (1971).

benefits were denied in their entirety for one year. California AFDC benefits are already insufficient to meet the standard of need set by the state.<sup>4</sup> Providing lower benefits, in some cases as much as four-fifths lower,<sup>5</sup> because the recipient has migrated from another state, means fewer resources will be available to purchase housing, clothing, transportation, and other necessities. Some families will simply have to do without many of these necessities. In short, if \$624 a month is barely adequate or not quite adequate for a single parent with two children to purchase all the basic necessities of life in California, there can be no doubt that \$190 a month would leave that family deprived of many of those vital necessities. As a practical matter, adequate housing or other necessities will be as out of reach for many residents with reduced benefits as if benefits were denied altogether.

The denial of basic necessities worked by the California statute is illustrated by the named plaintiffs' experiences. Deshawn Green could find no housing for herself and her two children on her Louisiana-based benefit of \$190, much less have funds available for other necessities. J.A. 72.

Debby Venturella and her two children were eligible to receive only \$341 a month, the benefit available in Oklahoma, rather than the California-based grant of \$624 a month. J.A. 74-77. Although Ms. Venturella could have found housing in Oklahoma for \$341, she could find nothing even approaching that price in California. *Id.* Similarly, Diana Bertolli and her young son were not able to find

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<sup>4</sup> *1994 Committee Print*, *supra* note 2 at 366.

<sup>5</sup> See J.A. 54, 68 (maximum AFDC benefits available in Mississippi at the time of this lawsuit were \$120 for a family of three, compared to California's maximum benefits of \$624 for a family of three).



any housing in California on her Colorado based-grant of \$280 a month. J.A. 81.

Denying vital necessities is a more severe burden on the everyday existence of residents of a state than denying either the right to vote, *Dunn v. Blumstein*, 405 U.S. 330 (1972), or civil service preferences, *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986). The penalty in this instance, moreover, is quite different from that in *Sosna v. Iowa*, 419 U.S. 393 (1975), in which the Court upheld a state statutory requirement that petitioners for divorce be residents for one year preceding their filing for divorce. The plaintiff in *Sosna* was not denied any necessities of survival. Furthermore, at the end of one year's residence, she would be able to obtain what she sought -- a divorce -- in its entirety. In this case, the denial of basic needs to recipients is irremediable.

California does not directly argue that recipients are not penalized compared to their fellow California residents. The state claims instead that the relevant comparison is not between the two classes of California residents, but between recipients' status in California and their status in their former state. Because recipients are eligible for the same amount of benefits in California as in their former states, the state claims that recipients are in "no worse position" because of their move. Petitioners' Brief on the Merits ("Pet. Br.") at 8.

The short answer to this argument is that the comparison urged by California is irrelevant. Under the Equal Protection Clause, the proper analysis is whether California treats its *own* residents equally. "No State shall ... deny to any person *within its jurisdiction* the equal protection of the laws." U.S. Const. Amend. XIV, Section 1 (emphasis added). As the District Court correctly recognized,

the relevant comparison is not between recent residents of the State of California and residents of other states. Were this the comparison, the result in *Zobel* would be inexplicable since no other state provided a bounty to its citizens and thus Alaska treated new residents better in this respect than residents of other states.

*Green v. Anderson*, 811 F. Supp. 516, 521 (E.D. Cal. 1993).

In any event, even if the relevant comparison, for purposes of the right to travel and the Equal Protection Clause, were between recipients' status before and after their move to California, the state's argument would have no merit.<sup>6</sup> It defies common sense to suggest that recipients are made no worse off by the California statute than they were before they moved to California. Because California has a much higher cost of living than almost all other states, recipients would receive, in real terms, fewer benefits after moving.<sup>7</sup> The District Court found that "the

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<sup>6</sup> If the state's argument were correct, it would sweep very far, justifying a two-tier system for periods substantially longer than one year, or even permanently. Indeed, Governor Pete Wilson has indicated he would expand the penalties on new residents beyond those already disallowed by *Shapiro* by denying public health and welfare benefits for newcomers for up to three years. Daniel M. Weintraub, *Wilson Favors Wait for Welfare Budget*, L.A. Times, Nov. 10, 1991 at A3.

<sup>7</sup> Petitioners attempt to sidestep this point by arguing that benefit levels need not relate to the standard of need. Pet. Br. at 13 n.5, 17. This may or may not be true, but it is irrelevant. Information on California's high cost of living is offered not to prove that California is required to match some cost-of-living standard, but rather to demonstrate the unsurprising proposition that recipients are in a far worse position receiving Louisiana-based benefits in California than they were



cost of living, particularly housing ... generally is much higher in California than elsewhere." *Green*, 811 F. Supp. at 521. The state does not dispute this, and the evidence is overwhelming that the District Court was correct.

Based on Fair Market Rent data compiled by the Department of Housing and Urban Development, California has the highest average housing costs in the country following Massachusetts. J.A. 87-88 (Declaration of Robert Greenstein). Similarly, Department of Commerce data for certain major metropolitan areas shows that housing costs for Los Angeles (the most populous metropolitan area in California) are second only to the Boston region and San Diego and are much higher than the national average. U.S. Department of Commerce, *Statistical Abstract of the United States* 493-95 (1994) (based on data from third quarter, 1992). The *Statistical Abstract* index compares housing costs in individual metropolitan areas to the national average cost of living indexed as 100. *Id.* The housing indices for Los Angeles and for San Diego are 169.6 and 188.1 respectively (or 69.6% and 88.1% higher than the national average).<sup>8</sup>

By contrast, housing costs are much lower in the states from which recipients migrated than in California. The housing index for the most populous areas of the states from which recipients moved are 80.4 for Oklahoma City, Oklahoma; 84.6 for New Orleans, Louisiana; and 118.4 for Denver, Colorado. *Id.*

California's higher costs are not limited to housing. A broader, composite cost-of-living index weighing the costs

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in Louisiana.

<sup>8</sup> These sources do not include data for California's other major metropolitan areas, San Francisco and Oakland.

of groceries, utilities, transportation, and miscellaneous goods and services, as well as housing, indicates that only the Washington, D.C. and Boston areas are more costly than Los Angeles and San Diego. *Id.*

By contrast, the cost of living in metropolitan areas in the states from which the three named plaintiffs migrated is much lower than it is in California. The cost of living in Los Angeles is significantly higher than the cost of living in the most populous cities in the states from which recipients moved. The composite index is 130.5 for Los Angeles, 92.6 for Oklahoma City, 96.0 for New Orleans, and 107.1 for Denver. *Id.* Moreover, the disparities in costs of living are presumably even greater for welfare recipients migrating from rural areas in states such as Louisiana and Mississippi to urban areas of California.<sup>9</sup>

In addition to penalizing the right to travel, the California statute implicates this fundamental right, triggering strict scrutiny, because the statute's primary objective is to impede travel. *Shapiro*, 394 U.S. at 629. As respondents have shown, the legislative history of the statute and similar measures make clear that the overriding objective was to stop welfare recipients from moving to California. Respondents' Brief on the Merits ("Resp. Br."), *Statement of the Case* B(1); see also pp. 14-15, *infra*. Moreover, as a natural consequence of the statute's penalty on the exercise of the right to travel discussed above, many citizens will be deterred from travelling interstate, or from settling

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<sup>9</sup> Plaintiffs' own situations illustrate the consequences of such cost of living differences. Debby Venturella, for example, could not find housing in California with the Oklahoma-level grant of \$341, but would have been able to do so in Oklahoma. J.A. at 76.

permanently in California. See Resp. Br., Section I.A(3).<sup>10</sup>

**B. California's Interests Are Not Compelling and Therefore Cannot Justify the Penalty on the Right to Travel Imposed by the Statute.**

Although California now claims that the sole purpose behind the two-tier benefit statute is to save money, the record amply demonstrates that California's real purpose is to deter migration into the state. As the District Court perceived, this objective is obvious because the statute is targeted not at indigents generally, but only at those who have recently moved into the state. "Because [the statute] does not save money by cutting all recipients' benefits equally, but instead affects only the benefits of new residents, its very structure suggests a goal of deterrence." *Green*, 811 F. Supp. at 522 n.14.

The legislative background and history of this and earlier proposals in California reinforce what Judge Levi found implicit in the statute itself: California's goal is to stop migration into the state by indigents from states with lower AFDC benefits. Campaign materials pushing a ballot initiative similar to the statute in the same year fairly trumpet the goal to "reduce any incentive to come to California solely for higher welfare benefits." J.A. 24 ("fact sheet" on the initiative). See also J.A. 20 (petition materials state that the initiative will "STOP out of state welfare recipients from moving to California just to increase their

<sup>10</sup> Evidence of deterrence is not, however, required. *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 257-58 (1974).

grants") (emphasis in original); J.A. 61 (ballot pamphlet for initiative states "[n]o wonder people move to California to collect welfare" and the initiative would "end California's status as a welfare magnet").

During debate in the California assembly on a predecessor legislative proposal which was nearly identical to the state statute ultimately enacted, the principal author of the earlier proposal stated:

Realizing that in fact funds are short in California today, it makes a great deal of sense then to insure that incentives are provided for people from other parts of the country ... that might be lured to California ... for that purpose — to benefit from higher assistance. This legislation attempts to take care of that by requiring a one year residency requirement in California ....

*Green*, 811 F. Supp. at 522 n.14.<sup>11</sup> Additional legislative history and other background information demonstrating the purpose of the California statute are summarized in Respondents' Brief, *Statement of the Case* B(1).

Finally, the state in its application for the federal waiver necessary to implement the statute flatly stated that the "purpose of this proposal is to reduce the incentive for families to move to California to receive public assistance." J.A. 48.<sup>12</sup>

<sup>11</sup> As the District Court concluded, after reviewing the legislative debate, "[t]here is evidence in the record to support the conclusion that the purpose of [the California statute] was to deter migration of indigents." *Id.*

<sup>12</sup> The amicus brief filed by four states sympathetic to California, including Minnesota which had enacted an analogous statute, reveals that those states understand that California is interested in reducing migration of poor families. These amici argue that among California's



As this Court has held, deterring migration by residents of other states is not a legitimate purpose -- let alone a compelling state interest. "[T]he purpose of inhibiting migration by needy persons into the State is constitutionally impermissible." *Shapiro*, 394 U.S. at 629. See also *United States v. Jackson*, 390 U.S. 570, 581 (1968) (if a law has "no other purpose ... than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional").

Even if one were to accept California's claim that its purpose was solely to save money, that interest is not compelling and therefore cannot justify infringing recipients' constitutional rights. The state's interest in saving money was advanced and rejected in *Shapiro*: "[A]ppellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification." 394 U.S. at 633. See *Plyler v. Doe*, 457 U.S. 202, 249 (1982) (Burger, C. J., dissenting) ("fiscal concerns alone could not justify discrimination against a suspect class or an arbitrary and irrational denial of benefits to a particular group of persons"); *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 263 (1974) (state must "do more than show that denying free medical care to new residents saves money").<sup>13</sup> Similarly, in *Sosna v. Iowa*,

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interests advanced by the statute are making "welfare benefits a neutral factor in a family's decision to move" and removing "the incentive for families to move solely in order to obtain higher benefit payments." Amicus Curiae Brief for Minnesota, et al. in Support of Petitioners at 13.

<sup>13</sup> See also *Rivera v. Dunn*, 329 F. Supp. 554, 558-59 (D. Conn. 1971) (state may not "preserv[e] the fiscal integrity of its programs" by denying public assistance to one class of residents), *aff'd*, 404 U.S. 1054 (1972); *Rinaldi v. Yeager*, 384 U.S. 305, 308 (1966) (state's

419 U.S. 393 (1975), the Court noted that the state purpose behind the one-year residency prerequisite for obtaining a divorce was quite different from "purely budgetary considerations." *Id.* at 406. In contrast to mere fiscal concerns, Iowa's interest in *Sosna* was in protecting its divorce decrees from collateral attack by other states and ensuring that those decrees would be recognized under the Full Faith and Credit Clause of the Constitution, Article IV, Section 1.

Moreover, California has failed to show that no less drastic means were available to accomplish its purpose. "Statutes affecting constitutional rights must be drawn with 'precision' ... and must be 'tailored' to serve their legitimate objectives." *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972) (internal citations omitted). There are numerous, alternative ways for the state to save the relatively minuscule amounts saved here<sup>14</sup> without invidious discrimination. The ongoing national debate over welfare reform demonstrates that there are many different avenues -- work incentives, changes in eligibility rules, across-the-board benefit reductions, to name a few -- for achieving more cost-efficient welfare systems without discriminating against recipients who migrate into the state.

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fiscal interest in recovering the cost of providing transcripts of trial court proceedings to criminal defendants does not justify imposing a reimbursement requirement only on one class of such defendants).

<sup>14</sup> California claims that the statute would have saved \$22.5 million in 1993-94. Petition for Cert. A22, ¶5 (Declaration of Dennis Hordyk). This constitutes less than one percent of what California spends on AFDC. *Id.* A23, ¶2 (Declaration of John D. Healy).



**II. EVEN IF A LESSER STANDARD OF REVIEW THAN STRICT SCRUTINY WERE APPLIED, THE CALIFORNIA STATUTE WOULD VIOLATE THE EQUAL PROTECTION CLAUSE.**

The state apparently recognizes the weakness of its argument that providing fewer AFDC benefits is not a penalty, because it proceeds to argue in the alternative that the statute works only an "incidental and remote" penalty; that under *Sosna v. Iowa*, 419 U.S. 393 (1975), strict scrutiny analysis is therefore not required; and that there is a rational basis for California's distinction between old and new residents. Pet. Br. at 15-16.

California misconstrues *Sosna*, which did not reject the strict scrutiny interest standard applied in *Shapiro* and *Maricopa County*. *Sosna* distinguished the durational residency requirements in those cases, which "were justified on the basis of budgetary or recordkeeping considerations," from Iowa's residency requirement which was justified by the much weightier interest in protecting its judicial decrees from collateral attack in other states. 419 U.S. at 406. *Sosna* is fairly read as holding that the durational residency requirement at issue was constitutional because the state's interest was compelling and could not feasibly be furthered by any more narrowly tailored remedy. *Id.* at 407-09 & n.20.<sup>15</sup>

<sup>15</sup> There is no basis for California's suggestion that the penalty in *Sosna* and the penalty on recipients in this case are similar because both merely "touch[] on the right to travel." Pet. Br. at 15. The penalties in the two cases are drastically different. Unlike the recipients here, the plaintiff in *Sosna* was not precluded from purchasing any

Even if the Court were to conclude that the penalty in this case was "incidental" or "remote" and that strict scrutiny was not required, the statute would still fail under any intermediate standard of review that might be applied. Thus, we submit, the California statute would clearly be invalid under the "undue burden" test set forth in *Planned Parenthood v. Casey*, 112 S. Ct. 2791, 2820 (1992), or under any "balancing" test that weighed California's interest against the burden on plaintiffs' right to travel.

As described above, the California statute penalizes interstate travel by placing basic necessities of life out of reach for many welfare recipients and therefore places a "substantial obstacle" in the path of welfare recipients migrating to California. *See id.*<sup>16</sup> The spousal notification provision struck down in *Casey* was an undue burden because married women wishing to have an abortion had to face an increased risk of domestic violence; under the California statute, citizens wishing to move to California must bear a substantial reduction in vital benefits.

More significantly, the "undue burden" test of *Casey* is premised on the existence of a very substantial, if not compelling, state interest -- i.e., protecting potential life. *See Roe v. Wade*, 410 U.S. 113, 154 (1973). Here, by

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of the "means by which to live." Her "benefit" was only delayed and not even partially denied; eventually she received all of what she requested.

<sup>16</sup> The severe impact of reduced or denied welfare benefits was recognized by Justice Rehnquist in *Memorial Hospital v. Maricopa County*, stating that "virtual denial of entry [is] inherent in denial of welfare benefits -- 'the very means by which to live.'" 415 U.S. 250, 285 (1974) (dissenting) (citing *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970)).

contrast, California's interest in potentially saving less than 1% of its AFDC budget is far less weighty.

The statute would fail under other variations of intermediate scrutiny as well. Even assuming that reducing state spending was an "important governmental objective," the California statute is not "substantially related to the achievement of [that] objective." See *Wengler v. Druggists Mutual Insurance Co.*, 446 U.S. 142, 150 (1980). First, the statute arbitrarily discriminates against one group of residents with no evidence that this group is less needy or better able to bear the benefit cuts. Second, the savings realized are too minuscule to effect any real change in California's budget. If saving money were sufficient justification under an intermediate scrutiny analysis, presumably California could constitutionally save funds by conditioning welfare benefits on, for example, the gender of the recipients.

Finally, for the reasons identified by the District Court and set forth in Respondents' Brief, Section I.C., the statute could likewise not survive even rational basis scrutiny. See *Green v. Anderson*, 811 F. Supp. 516, 523 (E.D. Cal. 1993). It is fundamentally irrational to determine the level of benefits paid to California residents who have the same needs and cost of living on the basis of which state they lived in during the previous year.<sup>17</sup>

<sup>17</sup> The suggestion that the distinction is rational because newcomers' needs are less than those of existing state residents or that they can more easily adjust to cuts (Brief of Amici Curiae Washington Legal Foundation, et al. at 3-4, 10) — a suggestion *not* made by California — is on its face implausible. Indeed, the evidence is to the contrary. See U.S. Department of Commerce, *1990 Census of Housing: Metropolitan Housing Characteristics 5* (Dec. 1993) (national average rents for new renters are higher than for long-term renters).

### III. THE CALIFORNIA STATUTE VIOLATES THE PRIVILEGES AND IMMUNITIES CLAUSE OF ARTICLE IV.

The California statute also violates the Privileges and Immunities Clause of Article IV, Section 2, which guarantees that the "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The Privileges and Immunities Clause applies here because citizens are classified and denied certain privileges based on their state of former residence. See *Zobel v. Williams*, 457 U.S. 55, 74-75 (1982) (O'Connor, J., concurring in judgment); *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 920 (1986) (O'Connor, J., dissenting). In effect, the California statute treats new residents, during their first year of residence in California, as if they were *still* residents of their former states.

The Privileges and Immunities Clause applies if a state treats residents and nonresidents differently when the non-resident seeks to "engage in an essential activity or exercise a basic right." *Zobel*, 457 U.S. at 76 (O'Connor, J., concurring in judgment) (quoting *Baldwin v. Fish & Game Comm'n*, 436 U.S. 371, 387 (1978)). As Justice O'Connor stated in her concurrence in *Zobel*, which struck down an Alaska durational residency requirement:

Certainly the right infringed in this case is "fundamental." Alaska's statute burdens those nonresidents who choose to settle in the State. It is difficult to

In any event, even if newcomers' needs were less than those of existing state residents, this would hardly provide a rational basis for a statute like California's, under which a new resident from Alaska with two children receives \$624 while a new resident from Louisiana with two children and the same needs receives \$190.



imagine a right more essential to the Nation as a whole than the right to establish residence in a new State.

*Id.* at 76-77. Similarly in this case, California's statute burdens any new residents who choose to settle in the state, such as the plaintiffs, by depriving them of basic means by which to survive. *See also Doe v. Bolton*, 410 U.S. 179, 200 (1973) (Privileges and Immunities Clause applies to provision of medical services). *Cf. Baldwin*, 436 U.S. at 388 (higher elk-hunting license fees for non-residents does not violate Privileges and Immunities Clause because elk-hunting is not a fundamental activity and the license fee scheme does not deprive nonresidents "of a means of a livelihood by the system or of access to any part of the State to which they may seek to travel").

A state law which burdens the exercise of a basic right by citizens of other states is invalid unless the noncitizens "constitute a peculiar source of the evil at which the statute is aimed" and unless there is a "'substantial relationship' between the evil and the discrimination practiced against the noncitizens." *Zobel*, 457 U.S. at 76 (O'Connor, J., concurring in judgment) (quoting *Hicklin v. Orbeck*, 437 U.S. 518, 525-27 (1978)). *See also Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 65 (1988) (the restriction must be "closely related to the advancement of a substantial state interest"). Furthermore, the Court must consider whether "there exist alternative means of furthering the State's purpose without implicating constitutional concerns." *Id.* at 67 (citing *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 284 (1985)).

In no sense are recipients who migrate to California from other states a "peculiar source of the evil" at which this statute is targeted. The AFDC benefits provided to new residents are only a tiny contributing factor to Califor-

nia's current fiscal situation, which supposedly motivated the law's enactment.<sup>18</sup> It is estimated the statute would have saved the state \$22.5 million in 1993-94, which is less than one percent of the state's AFDC expenditures<sup>19</sup> and an even smaller percentage of California's overall budget. California's claimed interest in saving money does not explain why the state chooses to pay some new migrants higher benefits (e.g., if they move from Alaska) than others (e.g., if they move from Louisiana), even though their needs as California residents are no different.

Finally, there are numerous alternative means of saving money without singling out one group of residents for discriminatory treatment based on the timing of their migration. *See* p. 17, *supra*. Accordingly, the California statute violates the Privileges and Immunities Clause of Article IV, Section 2.

<sup>18</sup> *Cf. Hicklin v. Orbeck*, 437 U.S. 518, 526-27 (1978) (Alaskan statute which required that Alaskan residents be given certain hiring preferences violated the Privileges and Immunities Clause, in part because non-Alaskan residents were not the major cause of the problem that the statute was designed to remedy, namely high unemployment among Alaskan residents).

<sup>19</sup> *Green*, 811 F. Supp. at 518; Petition for Cert. A22, ¶5 (Declaration of Dennis Hordyk); *id.* A23, ¶2 (Declaration of John D. Healy).



CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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December 13, 1994

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No. 94-197

In The  
**Supreme Court of the United States**  
October Term, 1994

ELOISE ANDERSON, INDIVIDUALLY AND IN HER  
OFFICIAL CAPACITY AS DIRECTOR,  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;  
AND RUSSELL S. GOULD, DIRECTOR,  
CALIFORNIA DEPARTMENT OF FINANCE,

*Petitioners,*

v.

DESHAWN GREEN, DEBBY VENTURELLA, AND  
DIANA P. BERTOLTI, ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit

AMICUS CURIAE BRIEF OF LAW PROFESSORS  
IN SUPPORT OF RESPONDENTS

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**AMICUS CURIAE BRIEF OF LAW  
PROFESSORS IN SUPPORT OF  
RESPONDENTS DESHAWN GREEN, ET AL.**

—♦—  
**INTEREST OF AMICI**

Amici are law professors who, with the consent of the parties, hope to address more directly than the parties the ingredients of our complex federal structure that we believe are significantly implicated by state laws imposing length of residence restrictions. From our perspective this case is primarily about the structure of the Union and its embedded constitutional norms. That is a perspective we hope the Court will find informative.

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**SUMMARY OF ARGUMENT**

State classifications that treat one class of bona fide residents less favorably than another, premised on the disfavored group's more recent migration from another State, conflict with the deepest constitutional values embodied in the American federal structure. They should be presumptively forbidden. The centrality of first principles of political union, together with the importance of freedom of interstate migration that derives from and reinforces that union and is essential for our people to secure the advantages of federalism, necessitates that the recognized legislative autonomy of the States not be employed to risk impairment of the unified federal structure within which they function, or of the systemic constitutional benefits it provides.

This Court's rulings are fully and wisely consistent with these imperatives. That various Justices at times have differed over the proper textual or doctrinal sources of the constitutional limitation on state power to impose length of residence distinctions should not be allowed to obscure the sound uniformity of the resulting decisions. Statutes like California's in this case plausibly impair constitutional guarantees of intrastate equality under either the Fourteenth Amendment's Citizenship Clause or Equal Protection Clause; of interstate equality under Article IV, § 2's Privileges and Immunities Clause or the dormant Commerce Clause; of the fundamental right of interstate migration under the commerce clause, Article IV, § 2, or the Fourteenth Amendment's Privileges and Immunities Clause; or any of these constitutional guarantees by virtue of structural interpretation of the premises of the United States federal system. Only an artificial disaggregation of the constitutional components of that structure could lead to a result that would enable the States freely to single out newcomers for less favored treatment than their inhabitants of longer duration. Instead, the whole should at least equal, if not exceed, the sum of the parts.

Accordingly, state laws treating recent residents less favorably than longtime residents should not be permitted absent extraordinary justification, if at all, unless those laws genuinely seek, in an appropriately limited fashion, to ensure bona fide residency, or perhaps themselves genuinely respond to the imperatives of good interstate relations or other elements of our federal structure. The disfavoring of recent migrants by California's statute does not purport to test bona fide residency, is

inimical to the values of a political union, and may not even be rationally related to a legitimate state purpose, much less be able to withstand the requirements of any significantly more demanding standard of review.

It is the stratification of a State's residents according to the recency of having settled in the State, not just an actual barrier or deterrent to interstate movement, that is inconsistent with the system of national cohesion and free interstate mobility. That is why, even if California can somehow convince this Court that it has a legitimate purpose in making its length of residence distinction, and even if its reduced benefit plan in theory may burden the right of interstate migration, standing alone, less than did the benefit denial laws invalidated in *Shapiro v. Thompson*, 394 U.S. 618 (1969), the statute remains unconstitutional. Moreover, California's law exacerbates the stratification problem by continuously dividing its new residents who otherwise qualify for welfare benefits into forty-nine separate subclasses of reduced benefits recipients (more, if migrants from federal territories are considered) based on the level of benefit provided in the State from which they emigrated. The risk of multiplication of laws subdividing a State's new residents according to their previous State of residence, if California's law is upheld, is as apparent as is its inconsistency with the constitutional primacy of the Union.





## ARGUMENT

### I.

THE POLITICAL UNIFICATION, INTRASTATE AND INTERSTATE EQUALITY, AND FREEDOM OF INTERSTATE MIGRATION OBJECTIVES OF THE CONSTITUTION LEAVE LITTLE ROOM FOR STATE LAWS CLASSIFYING BONA FIDE RESIDENTS BY LENGTH OF RESIDENCE.

The formation of "a more perfect Union" is the first purpose the preamble declares for the establishment of the Constitution. To be sure, the Framers intended the structure created by the Constitution to be, in Madison's words, "in strictness, neither a national nor a federal Constitution, but a composition of both."<sup>1</sup> The preservation of state autonomy certainly was not intended to impair the Union's paramount role in safeguarding our Nation against external threat and internal strife<sup>2</sup>, however, and indeed, one of the primary benefits of preserving "[t]his federalist structure of joint sovereigns" is to "make[ ] government more responsive by putting the States in competition for a mobile citizenry." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). The constitutional right of interstate mobility, which is well established though still not "ascribe[d] . . . to a particular constitutional

<sup>1</sup> THE FEDERALIST No. 39 (Madison), at 246 (C. Rossiter ed. 1961).

<sup>2</sup> See sources cited in Jonathan D. Varat, "Economic Integration and Interregional Migration in the United States Federal System," in *Comparative Constitutional Federalism: Europe and America* 23-24 (Greenwood Press 1990).

provision," *Shapiro*, 394 U.S., at 630,<sup>3</sup> is accordingly not only grounded in, but intimately connected to, both the political unification objectives of the Constitution and the individual's right to take advantage of one of the primary

<sup>3</sup> In *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 902-03 (1986), Justice Brennan's plurality opinion noted that the "textual source of the constitutional right . . . of free interstate migration . . . has proved elusive[.]" but that "[w]hatever its origin, the right to migrate is firmly established and has been repeatedly recognized by our cases." (citations omitted). The Court said in *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1982), that "[t]he right to travel and to move from one state to another has long been accepted, yet both the nature and the source of that right have remained obscure." As support for the existence of the fundamental right of interstate migration the Court and its Justices sometimes have relied on the interstate privileges and immunities clause of Article IV, § 2, see, e.g., *Zobel v. Williams*, 457 U.S. 55, 73-74 (1982) (O'Connor, J., concurring in judgment); *United States v. Wheeler*, 254 U.S. 281, 297-98 (1920); *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869); *Corfield v. Coryell*, 6 Fed. Cas. 546, 552 (C.C.E.D. Pa. 1823) (No. 3230) (Washington, J.); sometimes on the structural implications of the right to make demands upon or to respond to demands made by the federal government, *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 43-44 (1868); sometimes on the dormant commerce clause, *Edwards v. California*, 314 U.S. 160 (1941); *The Passenger Cases*, 48 U.S. (7 How.) 283 (1849); sometimes on the Fourteenth Amendment's prohibition on state abridgement of the privileges and immunities of national citizenship, *Twining v. New Jersey*, 211 U.S. 78, 97 (1908); and even on Fourteenth Amendment Due Process, see *Williams v. Fears*, 179 U.S. 270, 274 (1900). Historical support for the view that the Framers of the Fourteenth Amendment specifically intended its Privileges and Immunities Clause to guarantee the right to travel freely among the states may be found in Seth F. Kreimer, "The Law of Choice and Choice of Law: Abortion, the Right to Travel, and Extraterritorial Regulation in American Federalism," 67 N.Y.U.L.Rev. 451, 500-507 (1992).

benefits of state autonomy within the overall federal structure. As Justice O'Connor has written:

" . . . It is difficult to imagine a right more essential to the Nation as a whole than the right to establish residence in a new State. Just as our federal system permits the States to experiment with different social and economic programs, *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting), it allows the individual to settle in the State offering those programs best tailored to his or her tastes." *Zobel v. Williams*, 457 U.S. 55, 76-77 (1982) (O'Connor, J., concurring in judgment).<sup>4</sup>

<sup>4</sup> *Accord*, Varat, *supra* note 2, at 31: "[O]ne of the very values of preserving state autonomy – to preserve diverse communities for the benefit of its people – points, in a unified nation, to the preservation of the right of the people to move freely between states as a means of taking advantage of the benefits of state autonomy. That choice, after all, is a national value." More broadly:

"[T]here are important systemic connections among the right freely to migrate from state to state, the right of new residents to be treated equally with longer-term residents, and the right of state autonomy. When all are taken together, what is enforced is the right of Americans to freely choose where to settle, knowing that, as bona fide residents, they will enjoy the equal benefit of whatever diverse effects state autonomy has produced." *Id.*, at 34.

See also Kreimer, *supra* note 3, at 501:

"The purpose of the [Art. IV] privileges and immunities clause, like its predecessor in the Articles of Confederation, was to recognize a national identity that made states fellow-members of a broader polity. One of the constituents of that identity was the right of citizens of each of the newly-formed United States to travel among the states on a basis of equality."

The joint operation of the Constitution's concerns with political union and individual freedom to settle throughout that union (including the right to take advantage of the benefits of federalism) of course guarantee at a minimum the individual's right to travel or migrate interstate free of unreasonable "burdens," as traditionally understood. When the Court in *Shapiro* remarked on the longstanding recognition "that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement[.]" 394 U.S., at 629, the principle carried at least this much force. Yet the Court's holding that any state classification that serves to "penalize" the exercise of the constitutional right of interstate travel is unconstitutional "unless shown to promote a compelling governmental interest[.]" *id.*, at 634, seemed to go further and disallow lesser burdens. *Dunn v. Blumstein*, 405 U.S. 330 (1972), invalidating long durational residency requirements for voting, and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974), invalidating a one-year residency requirement for non-emergency medical care at county expense, confirmed that such state classifications could "penalize" the exercise of the right of interstate migration without actually deterring it or burdening it in the traditional sense.

That the Court generally would disallow disfavoring classifications based on recency of interstate mobility, without requiring independent proof that mobility had been substantially burdened in any conventional sense, should not be surprising once the political unification



implications of such classifications are taken into account along with the freedom of interstate migration implications. For classifications that officially, unnecessarily, and gratingly tend to denigrate the status of new residents despite their common membership in the Union provoke sensitivities based on state of origin that risk discord among the States and threaten interstate harmony.

In that light the Court's decision in *Zobel v. Williams*, 457 U.S. 55 (1982), invalidating an Alaska statute distributing natural resource income to the State's adult residents in shares that increased for each year of in-state residence, is readily understood, despite the fact that ineligibility for as large a share of the bonus as longtime residents would receive may have been unlikely to have had much of an inhibiting impact on migration to Alaska. Although the Court held the law a denial of equal protection for failing to meet the minimum rationality test, it acknowledged that "[i]n addition to protecting persons against the erection of actual barriers to interstate movement, the right to travel, when applied to residency requirements, protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents." *Id.*, at 60 n.6. Moreover, in concluding that it would be "clearly impermissible" for the states to divide citizens into expanding numbers of permanent classes depending on length of residence, the Court referred approvingly to Chief Justice Taney's comment, dissenting in *The Passenger Cases*, 7 How. 283, 492 (1849), that "[s]uch a power in the States could produce nothing but discord and mutual irritation, and they very clearly do not possess it."

Justice Brennan's concurring opinion, for himself and Justices Marshall, Blackmun, and Powell, emphasized more explicitly that "the federal interest in free interstate migration [was] clearly, though indirectly, affected by the Alaska dividend-distribution law, . . . provid[ing] an independent rationale for holding that law unconstitutional." 457 U.S., at 66. He felt that "the right to travel achieves its most forceful expression in the context of equal protection analysis" but also declared the Alaska scheme "inconsistent with the federal structure even in its prospective operation." *Id.*, at 67.

Justice O'Connor's opinion, concurring in the judgment, may have spoken most clearly to the force of the connection between length of residence distinctions and the imperatives of political union, however. She did so by appreciating that a State's unequal treatment of new residents is tantamount to denying "*non-Alaskans* settling in the State the same privileges afforded longer term residents[.]" *id.*, at 73 (emphasis supplied), an inequality that "conflicts with the constitutional purpose of maintaining a Union rather than a mere 'league of States.'" See *Paul v. Virginia*, 8 Wall. 168, 180 (1869)[.]" *id.*, and thus had to be measured by the demanding standards of the Privileges and Immunities Clause of Art. IV, § 2. Under that Clause the disparate treatment of recently arrived nonresidents constitutes the burden on the right to establish residence; "the 'burden' imposed on nonresidents is relative to the benefits enjoyed by residents." *Id.* at 76 n.6.

Subsequently, the Court held that a New Mexico statute providing a property tax exemption to only those Vietnam veterans who resided in the State before May 8, 1976, failed minimum rationality review under the Equal



Protection Clause, *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), and that a New York statute granting a preference in civil service employment solely to resident veterans who lived in the State when they entered military service violated the constitutional rights of resident veterans who lived outside the State when they entered the military, *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986), four members of the majority finding a violation of both the constitutional right to migrate and equal protection and two concluding that the classification only violated equal protection because it was irrational. The Court reached those results despite objections noted by the dissents in both cases that, unlike the *Shapiro* line of durational residency requirement cases, and unlike *Zobel*, the disfavored groups of veterans were no more disfavored than the bulk of longtime residents who were not veterans, and hence no sharp line disadvantaging former nonresidents was at issue. 472 U.S., at 629-30 (Stevens, J., dissenting); 476 U.S., at 922 (O'Connor, J., dissenting) ("[T]he New York scheme does not effectively penalize those who exercise their fundamental constitutional right to settle in the State of their choice by requiring newcomers to accept a status inferior to that of all oldtime residents of New York upon their arrival. . . . Those veterans who were not New York residents when they joined the United States Armed Forces, who subsequently moved to New York, and who endeavor to secure civil service employment are treated exactly the same as the vast majority of New York citizens or even the majority of candidates against whom they must compete in obtaining civil employment.")

Whatever may be said of *Hooper* and *Soto-Lopez*, however, the present case falls squarely within the parameters of the Court's precedents invalidating *length* of residence classifications. Like the new residents in *Shapiro*, *Dunn*, *Memorial Hospital*, and *Zobel*, and unlike the plaintiffs in *Hooper* and *Soto-Lopez*, the new California residents in this case are "requir[ed] to accept a status inferior to that of all oldtime residents . . . upon their arrival." *Id.* That is impermissible absent a high level, perhaps an impossibly high level, of justification. That was probably so from the moment of the Constitution's ratification, or even before, and, if anything, is even more clearly so since the ratification of the Fourteenth Amendment.

**A. EVEN WITHOUT THE FOURTEENTH AMENDMENT, STATE LENGTH OF RESIDENCE CLASSIFICATIONS ARE PRESUMPTIVELY INVALID.**

The understanding that implicit in our Federal Union is a right of free interstate migration, and that ensuring national unity entails that a State generally may not disfavor the citizens of another State, was reflected in Article IV of the Articles of Confederation and was carried over in both the commerce clause and the Privileges and Immunities Clause of Article IV, § 2.<sup>5</sup> It is barely a step to connect the two and insist that state power to disfavor residents who recently migrated from another State be carefully circumscribed.

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<sup>5</sup> See Jonathan D. Varat, "State 'Citizenship' and Interstate Equality," 48 U. Chi. L. Rev. 487-490 (1981).

Justice O'Connor has cited that history and connection in finding Article IV, § 2 to be the appropriate constitutional provision by which to measure the validity of length of residence classifications. 457 U.S., at 78-81. Others have argued that the irreconcilability of state discriminations against the interstate movement of persons "with the very idea of nationhood" should render durational residence restrictions on welfare invalid under the dormant commerce clause.<sup>6</sup> Perhaps the common interstate equality thread that binds these two original

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<sup>6</sup> Stephen Loffredo, " 'If You Ain't Got the Do, Re, Mi': The Commerce Clause and State Residence Restrictions on Welfare," 11 Yale L. & Policy Rev. 147, 193 (1993). Noting that the "ideal of national unity assumes special force and value during times of national crisis or periods of economic downturns, as states attempt to secede from problems of national scope[.]" Professor Loffredo elaborates:

"Durational residence restrictions on welfare undermine the goal of national solidarity in at least three respects. First, they abort the possibility of a national response to poverty in favor of a beggar-thy-neighbor approach that seeks to export the problem instead of solve it. Second, durational residence restrictions provoke internecine rivalries and destructive competition among the states. The adoption of such restrictions . . . invariably triggers a chain reaction. . . . And the political discourse surrounding these laws is rife with hostile cross-border fingerpointing and invective. Lastly, and most importantly, the proliferation of state laws designed to restrain the interstate movement of American citizens is antithetical to the very concept of nationhood. . . . [W]hether one conceives of durational residence restrictions as an attempt to fence out needy Americans from other states or as the relegation of poor newcomers to a de jure subordinate caste, such legislation strikes at the heart of national

constitutional provisions, adopted as joint instruments of national unification, should be emphasized.<sup>7</sup>

Assuming, as Justice O'Connor rightly does, that the protection of the interstate Privileges and Immunities clause is triggered by an activity – choosing to settle in a new State – that is "basic to the maintenance or well-being of the Union[.]" *Baldwin v. Fish & Game Commission*, 436 U.S. 371, 388 (1978), the normal Art. IV, § 2 analysis would ask whether " 'non-citizens constitute a peculiar source of the evil at which the statute is aimed' " and, if so, whether there is a demonstrated " 'substantial relationship' between the evil and the discrimination practiced against the noncitizens." 457 U.S., at 76 (quoting *Hicklin v. Orbeck*, 437 U.S. 518, 525-27 (1978)). If dormant commerce clause analysis applies, however, "where simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has been erected." *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978). The Court noted in that decision that it had

"consistently found parochial legislation of this kind to be constitutionally invalid, whether the ultimate aim of the legislation was to assure a steady supply of milk . . . ; or to create jobs by keeping industry within the State . . . ; or to preserve the State's financial resources from depletion by fencing out indigent immigrants, *Edwards v. California*, 314 U.S. 160, 173-174. In each of these cases, a presumably legitimate goal was sought

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union by rejecting one of its irreducible attributes: the concept of national citizenship." *Id.*, at 194-95.

<sup>7</sup> See Varat, *supra* note 5, at 518-19.



to be achieved by the illegitimate means of isolating the State from the national economy." *Id.*, at 627 (emphasis supplied).

With respect to the length of residence distinction at issue in this case, and like classifications, it is extremely unlikely that the demanding standards of justification under Art. IV analysis could be met, and so it may not be necessary to choose between those and the even more restrictive commerce clause standard. Were it necessary to choose, at least three reasons might suggest that something like the virtually per se rule of invalidity be applied. First, the independent force of the dormant commerce clause argues in favor of that solution. Second, the two provisions might be seen, not as alternatives, but as jointly supporting a particularly vigorous nondiscrimination rule. Third, and perhaps most importantly, insofar as these provisions protect against a State's unfavorably disparate treatment of its new residents, those residents must now look primarily to their State of current residence, not the State from which they migrated, for the benefits of government, whereas in the usual case of discrimination against nonresidents the disfavored nonresident at least can seek those benefits from his or her own home State as well.

**B. TAKING ACCOUNT OF THE FOURTEENTH AMENDMENT ONLY FORTIFIES THE PRINCIPLE THAT STATE LENGTH OF RESIDENCE CLASSIFICATIONS ARE PRESUMPTIVELY INVALID.**

If separate constitutional warrant were thought to be necessary to connect the right of free interstate mobility, and the right of interstate equality, that are foundational

components of our Federal Union, in such a way as to impose on the States an obligation to avoid intrastate inequality or stratification resulting from classifications based on the exercise of the (former nonresident's) right to migrate interstate, surely the adoption of the Fourteenth Amendment provides that warrant. One might understand the significance of the Fourteenth Amendment in two different ways. First, the Equal Protection Clause might be seen as a particularly appropriate source of obligation limiting state power to disfavor recent immigrants who are now acknowledged to be part of the state citizenry to whom the State owes a duty of impartiality, because the classification touches on the fundamentals of political union and free interstate migration in the context of a constitutional requirement of intrastate equality. Sensitivity to the risk that States might consign new residents to an inferior status, as compared to long-time residents, driven by the attendant implications for interstate discord and potential interference with interstate mobility, has appeared to undergird the Court's consistent pattern of equal protection rulings over the last quarter-century, whether formally articulated as applying "strict scrutiny" or "minimum rationality review."

Second, one might find either in the Citizenship Clause of the Fourteenth Amendment, which bestows state citizenship on all United States citizens who choose to "reside" in a particular State, or in the Fourteenth Amendment's Privileges and Immunities Clause, a right to "become[ ] a full-fledged member of the state community immediately upon establishing residence there." William Cohen, "Equal Treatment for Newcomers: The Core



Meaning of National and State Citizenship," 1 *Constitutional Commentary* 9, 17 (1984). With respect to those "state privileges and benefits that the state can limit to its own citizens" – those, like welfare benefits, where "a state is not required to share its treasury with the nation at large" – there exists "an obvious corollary": "One aspect of full sovereignty denied to the states is the power to determine membership in the [state] community." *Id.*<sup>8</sup> On this view, "durational residence requirements for state benefits and services are permissible only to the extent they respond to a reasonable concern for proof of domiciliary intent." *Id.*, at 19. As applied specifically to the statute challenged in this case, the argument is clear:

" . . . United States citizens become citizens of the states wherein they reside. There are no waiting periods. And, just as it would violate the Constitution to deny these new arrivals state citizenship, it would violate the Constitution to concede their citizenship in name only while treating them as if they were still citizens of other states. That should mean that it is unconstitutional to deny benefits to new citizens that are extended to other citizens similarly situated – subject only to reasonable assurances that claims of new residence are bona fide." William

<sup>8</sup> See also, Kreimer, *supra* note 3, at 506:

"National union entailed national citizenship as the primary allegiance, a fact expressly recognized in the adoption of the citizenship clause of the fourteenth amendment. The definition of state citizenship was derived from national citizenship: any United States citizen was ipso facto a citizen of the state in which she resided."

Cohen, "Discrimination Against New State Citizens: An Update," 11 *Constitutional Commentary* 73, 79 (1994).

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The unifying theme of these varying approaches, both with and without the Fourteenth Amendment, is that classifying bona fide residents in a fashion that singles out recent migrants for relative disadvantage is presumptively invalid and cannot easily be justified, if at all. Just how much more justification than that required to withstand analysis under Article IV, § 2 should be demanded to permit such a classification may remain uncertain, but the common ground is that length of residence distinctions among a state's bona fide residents implicate concerns of national unity and freedom of interstate migration sufficiently that they are to be used only sparingly, at best.

**C. NEITHER REASONABLE MEASURES OF BONA FIDE RESIDENCY, NOR THIS COURT'S DECISION IN *SOSNA V. IOWA*, 419 U.S. 393 (1975), UNDERMINE THE PRINCIPLE THAT STATE LENGTH OF RESIDENCE CLASSIFICATIONS ARE PRESUMPTIVELY INVALID.**

As this Court has well understood, " 'appropriately defined and uniformly applied bona fide residency requirements' " are presumptively valid, *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 255 (1974) (quoting *Dunn v. Blumstein*, 405 U.S. 330, 342 n.13 (1972)), whereas durational residency requirements are not. The reason for the former is that the constitutional recognition of state policy autonomy in our federal structure necessitates and

justifies state power to prefer residents, as distinguished from nonresidents, with respect to at least most state-created benefits.<sup>9</sup> Implicit in legitimate state power to treat residents and nonresidents differently is some power to define residency, but in a fashion that does not make a mockery of the presumptive constitutional invalidity of length of residence distinctions.

With respect to most lengthy residence distinctions, this Court has refused to accept the claim that they served appropriately as a measure of bona fide residence. That certainly was true in *Shapiro* with respect to the one year waiting period for eligibility to receive welfare benefits, 394 U.S., at 636, and is equally true here. In fact, the bona fide residence of respondents appears to be conceded here. The only exception has been the Court's willingness to accept a one year residency requirement for lower in-state university tuition as "a test of bona fide residence," *Zobel v. Williams*, 457 U.S., at 64 n.13 (explaining why "*Starns v. Malkerson*, 326 F.Supp. 234 (Minn. 1970) cannot be read as a contrary decision of this Court" to the impermissibility of state efforts to divide citizens into expanding numbers of permanent classes). The incentives and opportunities to fake residency may explain the Court's tolerance for long durational residency requirements for the tuition benefit, since "[t]he differences between out-of-state and in-state tuition are substantial, and domiciliary intent is a particularly difficult factual issue in the case of college students." Cohen, *supra*, 1 Constitutional Commentary, at 19-20. See *Vlandis v. Kline*, 412 U.S. 441, 453-54 (1973) (a state may "establish

<sup>9</sup> See Varat, *supra* note 5, at 519-30.

such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.")

*Sosna v. Iowa*, 419 U.S. 393 (1975), which sustained a one-year durational residency requirement to qualify as a petitioner in a divorce action, is also compatible with a rule resting on the imperatives of interstate harmony in a Federal Union that presumptively invalidates state laws establishing length of residence distinctions. Thus, petitioner is mistaken in believing that *Sosna* is "inexplicable" unless strict scrutiny is "reserved for statutes which impose a significant and severe penalty on travel." Petitioners' Brief, at 15.

Even on its own terms, *Sosna* is readily distinguishable from the present case. The Court made slight reference to *Sosna*'s apparent failure to convince the state court judge that she had alleged "good-faith residence." *Id.*, at 409 n.22. It emphasized that the "[a]ppellant was not irretrievably foreclosed from obtaining some part of what she sought, as was the case with the welfare recipients in *Shapiro*, the voters in *Dunn*, or the indigent patient in *Maricopa County*," *id.*, at 406, or, one might add, as is the case currently before the Court. Primarily, however, the Court found *Sosna* distinguishable from the earlier cases because the "residency requirement may reasonably be justified on grounds other than purely budgetary considerations or administrative convenience[.]" *id.*, at 406, and it held "that the state interest in requiring that those who seek a divorce from its courts be genuinely attached to the State, as well as a desire to



insulate divorce decrees from the likelihood of collateral attack, requires a different resolution . . . than . . . in *Shapiro*, . . . *Dunn*, . . . and *Maricopa County* . . . [," *id.*, at 409. Here again the present case is virtually identical to *Shapiro* with respect to the nature of the budget and administrative-based state interests proffered. Moreover, there is no apparent question of the respondents' attachment to California as bona fide residents.

Justice O'Connor distinguished the length of residence classification sustained by the Court in *Sosna* from the one she found impermissible under Art. IV, § 2 in *Zobel* by suggesting that Iowa "showed that non-residents were a peculiar source of the evil addressed by its durational residency requirement" as "[t]hose persons could misrepresent their attachment to Iowa and obtain divorces that would be susceptible to collateral attack in other States." 457 U.S., at 78 n.8. The Court's opinion in *Sosna* also noted that the requirement "furthers the State's parallel interests both in avoiding officious intermeddling in matters in which another State has a paramount interest, and in minimizing the susceptibility of its own divorce decrees to collateral attack." 419 U.S., at 407.

Highlighting these features of *Sosna* indicates how different the usual length of residence distinction, including the one in this case, is, as related to the underlying national unity values that ground a presumptive rule against length of residence distinctions. To the extent that the Iowa durational residency requirement for divorce itself furthered the minimization of interstate conflict by not undermining the legitimate jurisdiction of another State, the basic values giving rise to the presumptive rule were not impaired. Moreover, the Court took explicit note

that "Iowa's interests extend beyond its borders and include the recognition of its divorce decrees by other States under the Full Faith and Credit Clause of the Constitution, Art. IV, § 1." *Id.* These considerations stand in stark contrast to durational residence restrictions like California's, which can neither fairly be characterized as efforts to avoid "officious intermeddling" in another State's efforts, nor be justified by reference to a separable constitutional provision, like the Full Faith and Credit Clause, that addresses another facet of interstate harmony. Rather, they must be understood as continuously emphasizing the second-class status of those who recently migrated from another State. If an exception from the presumptive rule should be recognized in the rare case when a length of residence distinction arguably serves to promote good relations among the States, it surely should not encompass the more common instances where the risk of impairment of good interstate relations is present.

## II.

**BY CREATING MULTIPLE, CONTINUOUS CLASSES OF NEW RESIDENTS, SUBDIVIDED ON THE BASIS OF STATE OF ORIGIN, EACH OF WHICH IS TREATED LESS FAVORABLY THAN LONGTIME RESIDENTS, THE CALIFORNIA STATUTE IS PRESUMPTIVELY INVALID.**

The solid, multi-layered foundation supporting the Court's precedents invalidating length of residence distinctions should make clear that petitioners' attempts to distinguish the waiting period cases, *Hooper* and *Soto-Lopez*, as cases of total, rather than partial, foreclosure of



benefits, and to distinguish *Zobel* as a case involving permanent, rather than temporary, distinctions, are unavailing. Unlike petitioners' exclusive focus on the Fourteenth Amendment Equal Protection Clause, the Court and many of its Justices over an extended period of time have appreciated the need to control length of residence classifications, because of the potential threat they pose to the most fundamental features of the Federal Union. The Court's explicit recognition in *Zobel* that protection against differential treatment of new residents *per se* sufficed, as an alternative to protection from actual barriers to interstate travel, to limit length of residence distinctions, was not limited in the way petitioners suggest. More fundamentally, to accept petitioners' approach would be to eviscerate the strength of the Court's attachment to the joint interests in political union and interstate freedom of mobility. That attachment ought to be reaffirmed and strengthened, not diluted.

The particulars of the California scheme only emphasize its incompatibility with the underpinnings of the Federal Union. Each person who migrates to California from another State may be relegated to an inferior status for having done so for "only" a year, but a perpetual class of newcomers would be sorted continually into different categories as they arrived based on what State (or federal territory) they had just left. Setting aside for the moment California's purpose to fence out indigent immigrants, and the likely effect it would have on deterring migration, both features absent in *Zobel*, the California law is even more inimical to political union in its subdividing of new residents by State of origin than was the Alaska law in *Zobel* in its many layers based on length of residence as

such. Justice O'Connor's argument in *Zobel* that Art. IV, § 2 should have been applied, because "Alaska's scheme classifies citizens on the basis of their former residential status[.]" 457 U.S., at 75, is literally and comprehensively true under the California scheme. It is bad enough from the perspective of the individuals who would have to wait a year to be treated as equal members of the state community. Yet from the perspective of the systemic interest in national cohesion, a proliferation of such breakdowns by state of former residence would be nightmarish. It is hard to imagine a classification system more incompatible with the notion of a unified nation, with the notion of a system of free interstate migration, or with the notion of state obligations to treat all its bona fide residents as full members of the state citizenry.

California apparently has gone even further in gratuitously ignoring its obligations as part of the Union. The statutory ineligibility of recent migrants from other States and federal territories for welfare assistance at the same level as longtime residents apparently does not extend to recent legal immigrants from other countries! Joint Appendix 65. Surely the obligations of Union and intra-state equality demand more than this form of trivialization.

Finally, the detrimental effect of length of residence distinctions on out-migration, as well as on in-migration, or on decisions whether to settle elsewhere for a time but possibly migrate back again, should be considered. As Justice Brennan noted in his separate opinion in *Zobel*, 457 U.S., at 68, "if each State were free to reward its citizens incrementally for their years of residence, so that a citizen leaving one State would thereby forfeit his

accrued seniority, only to have to begin building seniority again in his new State of residence, then the mobility so essential to the economic progress of our Nation, and so commonly accepted as a fundamental aspect of our social order, would not long survive." Although a statute like California's does not allow the accruing of seniority beyond one year, persons on welfare who otherwise might contemplate moving to another state for a potential work opportunity might be inhibited from migrating for fear that if the move does not work out the family will have to start all over again, upon returning to California, at a level of assistance potentially lower than is now being received. (That these concerns apparently would not be present for migration to, and return from, another country only reinforces the point.)

In short, the California statute is a prime example of a state refusal to treat its new bona fide residents in accordance with the fundamental tenets of national unity, freedom of interstate migration, and the obligations of impartiality owed to all a state's bona fide residents.

### III.

#### **CALIFORNIA HAS PROVIDED NO JUSTIFICATION FOR ITS STATUTE THAT REMOTELY OVERCOMES ITS PRESUMPTIVE INVALIDITY.**

For the reasons already presented, unless genuinely employed in an appropriately limited fashion to test bona fide residency, or justified by operating to promote rather than potentially irritate interstate harmony, state length of residence restrictions should be held invalid per se, or

at least invalid absent the most extraordinary justification. Even under an unmodified application of Article IV, § 2 analysis, laws like that challenged here cannot stand unless nonresidents are shown to be a peculiar source of the evil at which the statute aims and the state demonstrates a substantial relationship between the evil and the discrimination. But the justifications offered for California's statute may not even survive minimum rationality review.

The legitimacy of California's interest in reducing its welfare budget is not in issue, but the method by which it seeks to do so is. It is the distinction between newer and longtime residents that requires overriding justification, not the ability to reduce aggregate welfare expenditures, whether generally or in some selective fashion that does not violate independent constitutional guarantees, as this method of selection so clearly does.

Policies designed to save scarce resources through a mechanism that directly targets interstate migration conflicts directly with the premises of Union and must not be allowed, as *Shapiro* clearly held. Not only is "the purpose of inhibiting migration by needy persons into the State . . . constitutionally impermissible," 394 U.S., at 629, but "a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally." *Id.* Those objectives, and this mechanism of welfare expenditure reduction, are no more valid in the form of a purported legitimate purpose in "studying the effect of welfare reform initiatives," Brief of Petitioner 21, than in the unvarnished form in which they were presented in *Shapiro*. As in *Shapiro*, moreover, there is no basis in fact for assuming that all, or even a



substantial number, of persons eligible for assistance who migrate to California do so solely to obtain higher welfare benefits.

In any event, under an elevated level of scrutiny, it is certain that the California statute cannot survive analysis. California has made no attempt to demonstrate that new residents from other parts of the Union seeking welfare are a peculiar source of its budgetary problems. In the midst of its most significant economic downturn since the Great Depression, it seems exceedingly unlikely that it could succeed in doing so. Moreover, the immediate eligibility of legal immigrants from foreign nations undermines the credibility of any assumption that the State sought to pinpoint a peculiar source of the stress on its welfare budget. Rather than choose the mechanism that, if permissible at all, should have been the last resort, California singled out newcomers for disproportionate benefits reductions, without regard to the cost of living, and most importantly, without regard to the policy's incompatibility with the constitutional norms inherent in our Federal Union.

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### CONCLUSION

The judgment of the Court of Appeals should be affirmed. The Court should declare that state laws imposing length of residence classifications disadvantaging new bona fide residents are presumptively invalid as irreconcilable with the interstate mobility, interstate

equality, and intrastate equality premises of our Federal Union.

DATED: December 13, 1994

Respectfully submitted,

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No. 94-197

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1994

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ELOISE ANDERSON, *et al.*,  
*Petitioners,*  
v.

DESHAWN GREEN, *et al.*,  
*Respondents.*

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On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

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**BRIEF OF AMICUS CURIAE  
THE AMERICAN BAR ASSOCIATION  
IN SUPPORT OF RESPONDENTS**

---

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BRIEF OF AMICUS CURIAE  
THE AMERICAN BAR ASSOCIATION  
IN SUPPORT OF RESPONDENTS

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**INTEREST OF AMICUS**

The American Bar Association (ABA) is the leading national membership organization for the legal profession with more than 350,000 members across the United States.<sup>1</sup> "The purposes of the Association are to uphold and defend the Constitution of the United States, . . . [and] to apply the knowledge and experience of the pro-

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<sup>1</sup> Neither this brief nor the decision to file it should be interpreted to reflect the views of any judicial member of the American Bar Association. No inference should be drawn that any member of the Judicial Administration Division Council has participated in the adoption of or endorsement of the positions in this brief. This brief was not circulated to any member of the Judicial Administration Division Council prior to filing.



fession to the promotion of the public good." ABA, *ABA Constitution and Bylaws: Rules of Procedure*, House of Delegates, Art. 1, § 1.2, 1994-95.

This case implicates the ABA's long held concern for the well-being of children and families living in poverty. The ABA has expressed this concern by creating the Center on Children and the Law, the Steering Committee on the Unmet Legal Needs of Children, and the Commission on Homelessness and Poverty. In the past two years alone, the ABA has produced two reports on the difficulties facing children, including *America's Children at Risk* (American Bar Association Presidential Working Group on the Unmet Legal Needs of Children and their Families, *America's Children at Risk* (July, 1993) [hereinafter "*Children at Risk*"]), its "landmark" report on the unmet legal needs of children. See also ABA Steering Committee on the Unmet Legal Needs of Children, *The Impact of Domestic Violence on Children* (1994). Among other recommendations, that report called for "[t]he organized bar [to] seek improvements in the AFDC program . . . and [to] work to defeat any proposed changes that penalize recipients." *Children at Risk*, *supra*, at 12. Similarly, the ABA's House of Delegates adopted a resolution urging "that welfare programs be funded at a level required to meet the need for the basic essentials of life," a level that will not be obtained by new California residents if the California statute at issue in this case goes into effect. See ABA Commission on Homelessness and Poverty, *Report to the ABA House of Delegates* (August 1992), Recommendation No. 122.

The ABA also has expressed specific concern about durational residency requirements. In part as a result of its view that "[t]he express purpose of discriminating against newcomers is constitutionally impermissible," *id.* at 5, and its understanding that "benefit levels are tailored to the cost of living in [each] jurisdiction, and . . . no benefits in any state in the nation are sufficiently generous to lift a family above the poverty line," *id.* at 4, the

House of Delegates resolved "[t]hat the American Bar Association opposes linking public assistance for needy persons to requirements which infringe on the right of privacy and on other individual freedoms, such as the right to travel." *Children at Risk*, *supra*, at 87. The Association believes that its experience with these issues will allow it to make a substantial contribution to the Court's consideration of this case.

### STATEMENT

This case involves a constitutional challenge to California Welfare and Institutions Code section 11450.03, which limits the level of Aid for Families with Dependent Children (AFDC) benefits available to new California residents during their first year in the State. During that first year, the statute limits benefits to the level provided by the state from which an individual has moved. As a result, many new residents would receive benefits that are only a fraction of those paid to other Californians in comparable financial circumstances. This is true despite the fact that the cost of living in California is among the highest of any state.

AFDC is a federal program, administered by the states, which is designed to provide money to families who lack sufficient income to meet their children's basic needs. See The Stanford Center for the Study of Families, Children, and Youth, *Welfare Reform and Children's Well-Being: An Analysis of Proposition 165*, at 2 (September 1, 1992) [hereinafter "*Welfare Reform*"]. Seventy percent of the recipients are children, almost half of whom are below the age of six; the other thirty percent are the children's parents or caretakers. See *id.* at 1, 14. Most of these families have just one or two children, see *id.* at 14, and approximately half receive benefits for less than a year. See *id.* at v, 18.

Seventy percent of the families who receive AFDC are headed by a single parent, nearly always the mother. See *id.* at iv. One large group of these single mothers

consists of women who have a high school or greater education, are older than 25, have children under five, and have been catapulted into poverty by divorce. The second large group consists of women who are 20 to 30 years old and who have little education. *See id.* at v.

AFDC benefits vary widely from state to state. At the time this case was filed, the maximum AFDC grant for a family of three in California was \$624 a month. *See* House Committee on Ways and Means, 103d Cong., 2d Sess., 1994 *Green Book* 375 (July 15, 1994) [hereinafter "1994 *Green Book*"]. This was significantly less than the federal poverty level for a family of three.<sup>2</sup> In Texas, by contrast, the maximum benefit for a family of three was \$184 per month. *See id.* at 376. Under section 11450.03, that ceiling would also apply to any Californians who had previously resided in Texas and who needed to apply for assistance during their first year of residence.

Respondents filed a class action challenging the constitutionality of California's limitation on benefits for new residents. The district court agreed that the law was unconstitutional, finding that it infringed respondents' right to travel under this Court's line of cases beginning with *Shapiro v. Thompson*, 394 U.S. 618 (1969). *See Green v. Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993). The United States Court of Appeals for the Ninth Circuit affirmed, adopting the reasoning of the district court. *See Green v. Anderson*, 26 F.3d 95 (9th Cir. 1994).

#### SUMMARY OF ARGUMENT

1. This case fits squarely within the holdings of *Shapiro v. Thompson* and its progeny, which require a state to show a compelling interest to support any law that singles out new state residents and denies them the

<sup>2</sup> Using 1994 data, California's AFDC benefits only constituted 86% of the federal poverty level even when combined with food stamps. *See 1994 Green Book* at 366.

basic necessities of life or other fundamental interests. While California's rule is slightly less draconian than the complete bar to welfare benefits at issue in *Shapiro*, the benefits of new residents are reduced to a level far below what is required for a minimally acceptable quality of life. Moreover, the State has not come close to offering a compelling interest to support this discrimination against new residents.

2. Petitioners ask the Court to relax the standard of scrutiny that would apply to this case under *Shapiro*. They also ask this Court to establish a rule allowing them to disfavor new residents—to whatever extent and for whatever reason—as long as the benefits match those the new residents would have received in their prior states. These requests should be rejected. *Shapiro's* principles remain worthy of support. They help to prevent the erosion of a unified Nation and the creation of second class citizenries. Moreover, petitioners have offered no argument sufficient to justify departing from principles of *stare decisis* in this case. Neither *Shapiro's* compelling-interest standard nor its central principle of ensuring equality in fundamental benefits between new and long-term residents has been undercut by recent cases. Furthermore, this central principle is supported by similar principles animating other areas of constitutional law.

3. Even if the Court were to overturn *Shapiro* in favor of rules proposed by petitioners, California's law could not survive. First, it does not ensure that new residents continue to receive the same level of benefits as they received in their former states, and it thus must receive strict scrutiny even under petitioners' theory. Second, it cannot even survive rational-basis scrutiny, because the purposes proposed by the State either do not distinguish between new and long-term residents or are themselves illegitimate.



## ARGUMENT

California's statutory restriction on welfare benefits for new residents is plainly unconstitutional. It denies the "basic necessities of life" to many thousands of Californians, solely because they are new to the State. Such a rule requires a compelling justification. Rather than offering such a justification, petitioners have sought to change the nature of the legal inquiry, arguing that it is constitutionally permissible to discriminate against new residents as long as their treatment is at least as favorable as they would have received in their prior home state. This approach fundamentally misconceives the concerns that have animated this Court's "right to travel" decisions. It should be rejected.

### I. THIS COURT'S DECISIONS REQUIRE INVALIDATION OF THE CALIFORNIA STATUTE.

#### A. The *Shapiro* Doctrine.

In *Shapiro v. Thompson*, 394 U.S. 618 (1969), and its progeny—*Dunn v. Blumstein*, 405 U.S. 330 (1972), and *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974)—this Court applied strict scrutiny to laws that denied important benefits or fundamental rights to persons solely because they had recently exercised their right to move from one state to another. Under that standard, California's limitation on AFDC benefits for new residents cannot stand. Indeed, this case is indistinguishable from *Shapiro* itself.

The state law at issue in *Shapiro* barred all welfare payments to new residents for one year. Recognizing that such a restriction would severely penalize interstate migration by indigents, the Court required the state to show a compelling state interest. It rejected, as constitutionally illegitimate, the asserted goal of discouraging poor persons from moving to the state, reasoning that a state may not set out to discourage exercise of a constitutional right. See *Shapiro*, 394 U.S. at 631. It added that it is

no more legitimate to attempt to "fence out those indigents who seek higher welfare benefits," *Shapiro*, 394 U.S. at 631, or to attempt to categorize citizens, in the distribution of public benefits, on the basis of the "contributions" they have previously made to a given state, see *id.* at 632. Finally, the Court rejected a fiscal rationale, holding that "saving of welfare costs cannot justify an otherwise invidious classification." *Id.* at 633. See also *Maricopa County*, 415 U.S. at 263 ("appellees must do more than show that denying free medical care to new residents saves money").

The Court later applied *Shapiro* to strike down laws that barred new residents from voting (*Dunn v. Blumstein*) and from receiving free nonemergency medical care for indigents (*Maricopa County*). In each of these cases, as in *Shapiro* itself, the basis of the Court's decision was the inferior treatment of new residents when compared with long-term residents in the same state. For example, in *Maricopa County*, it was quite likely that surrounding states provided less medical care to their residents than the free emergency care to which new residents were entitled after settling in Maricopa County. Cf. *Maricopa County*, 412 U.S. at 271 (Douglas, J., concurring) (noting that eight nearby Arizona counties had no county hospitals at all and only provided indigent care on a contract basis). As a result, "any particular indigent moving to Maricopa County from outside the State of Arizona would probably experience a net gain rather than a net loss in the availability of free medical care." Thomas R. McCoy, *Recent Equal Protection Decisions—Fundamental Right to Travel or "Newcomers" as a Suspect Class?*, 28 Vanderbilt L. Rev. 987, 1008 (1975). Thus, in concluding that new residents had been penalized for moving to Arizona, the Court relied on a comparison of their benefits with those of long-term residents rather than on a comparison with the benefits to which new residents had been entitled in their former states. As the Court concluded, "the right of interstate travel must be seen as insuring new residents the



same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents." *Maricopa County*, 412 U.S. at 261.<sup>3</sup>

Since *Maricopa County* the Court has not considered a case involving discrimination against new residents with respect to basic necessities or fundamental rights. However, in cases involving discrimination with respect to less important benefits, the Court has continued to insist that there is no legitimate interest in favoring long-term residents *per se*, and has therefore invalidated the laws at issue in each of these cases as failing to survive even rational-basis scrutiny. See *Zobel*, 457 U.S. 55 (1982) (invalidating an Alaska statute which distributed surplus revenue based on length of residence); *Hooper*, 472 U.S. 612 (1985) (rejecting exemption from property tax that applied only to Vietnam veterans who were state residents before 1976); *Soto-Lopez*, 476 U.S. 898 (overturning civil service employment preference provided only to veterans who were New York residents when they entered the armed forces).

Thus, the Court has held, in essence, that a state may not, absent some very good justifications, differentiate among its own residents based on the fact that some of them have recently exercised their right to travel. And it has held that such discrimination requires a particularly compelling justification when it affects a person's basic needs or fundamental interests.

<sup>3</sup> See also *Shapiro v. Thompson*, 394 U.S. 618, 627 (1969) (conceptualizing the distinction at issue as one between "two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction"); *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1982) ("[T]he right to travel, when applied to residency requirements, protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents."); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 618 n.6 (1985) (same); *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 904 (1986) (same) (plurality opinion).

## B. The California Statute's Effect on Access to "Basic Necessities."

The law at issue here plainly falls into the category requiring the most compelling justification. The reductions in AFDC benefits it requires will, by their very nature, affect new residents' access to "basic necessities of life." *Maricopa County*, 415 U.S. at 259 (internal quotation omitted). Indeed, these reductions will be devastating.

As we have noted, for those Californians who have not recently arrived from other states, the maximum benefits from AFDC and food stamp programs in 1994 constituted only 86 percent of the poverty line. See *1994 Green Book, supra*, at 366. But, as explained by Michael Wald in an expert declaration before the trial court, "[m]ost people who study income and welfare agree that an income less than the poverty line jeopardizes the basic well-being of all family members." (Wald Decl. ¶ 9, at 4, attached to *amicus* brief of Coalition of Homelessness of San Francisco in trial court record).<sup>4</sup> In fact, some studies suggest that an income substantially above the poverty line is necessary for a "bare minimum" existence in California. See *Welfare Reform, supra*, at 10 (discussing study by Consumers Union of America).

The absence of sufficient income to meet the basic needs of children has severe consequences. Poverty decreases a parent's ability to provide emotional support to

<sup>4</sup> See also *Welfare Reform, supra*, at v. 9 (noting that a recent national report by Republican members of the U.S. House of Representatives Committee on Ways and Means finds that AFDC levels are insufficient for "basic survival"); *id.* at 11 ("Just recently the National Commission on Children, the most broadly representative and politically diverse group of politicians, service providers, community leaders and academicians ever to address the needs of children, concluded that 'AFDC fails to meet most families' minimum economic needs . . . . In none of the 50 states do combined welfare benefits . . . provide even a modestly secure standard of living for families with children.'"); *Children at Risk, supra*, at 11.

children, *id.* at 32, leads to emotional problems for children, *id.* at 35, increases mortality rates for young children, *cf.* Children's Defense Fund, *America's Children Falling Behind: The United States and the Convention on the Rights of the Child 2* (1992) [hereinafter "*America's Children*"], and, by increasing stress on families, increases the likelihood of child abuse, *id.* at 26.<sup>5</sup> The Children's Defense Fund summarizes:

Because the poverty thresholds reflect the minimum incomes that families and children need, growing up with a family income below—and often far below—that level threatens children's full and healthy development in a host of ways. From the womb to adulthood, poor children are at higher risk of health, developmental, and educational setbacks—problems, that are likely to follow them through life. For some children, poverty is deadly. Each year, an estimated 10,000 American children die from poverty's effects. For many more, poverty leads to inadequate health care, hunger, family stress, inability to concentrate in the classroom, and school dropout.

*Id.* at 19-20.

California's durational residency requirement will reduce the benefits provided to new residents significantly below the already inadequate levels provided to long-term residents. While California set 1993 benefits at

<sup>5</sup> See also *Welfare Reform*, *supra*, at v ("[N]umerous studies show[] that poor children have significantly greater health, academic and emotional problems than children from non-poor families."); *id.* at vi, 11, 32; Wald Decl. ¶ 9, at 4 (poverty leads to inadequate nutrition, unsafe housing, inadequate emotional support, and poor educational opportunities); Center on Hunger, Poverty and Nutrition Policy, *Two Americas: Comparisons of U.S. Child Poverty in Rural, Inner City and Suburban Areas* 13 (1994) ("Poverty may be the single most important factor in producing outcomes we fear most for our young. The high correlation of poverty with poor health, drugs, and school failure, for example, suggests that attempts to improve the condition of childhood in America must start with efforts to reduce poverty.").

\$624 a month for a three-person family, the median state grant across the country was a mere \$367 a month. See 1994 *Green Book*, *supra*, at 375-77. Benefit levels provided to families from 22 states will be less than half the level considered by California itself to be essential for purchasing basic necessities,<sup>6</sup> according to Robert Greenstein, Executive Director of the research Center on Budget and Policy Priorities. (Greenstein Decl., JA 90.)

The full impact of the reduced benefits can best be understood by highlighting one consequence for new residents—they are likely to live in extremely poor housing or even become homeless. Even with the higher benefits available to long-term residents, "[m]ost families in California who receive AFDC benefits often live in apartments of poor quality, or live in overcrowded apartments." (Wald Decl. ¶ 10, at 4.) In Los Angeles County alone, according to a 1987 *Los Angeles Times* survey, 200,000 people lived in garages many of which lacked heat, electricity and plumbing and which rented for as high as \$400 per month. See Jennifer Wolch and Michael Dear, *Malign Neglect: Homelessness in an American City* 81 (1993).

New residents dependent on AFDC will be even worse off than long-term residents, as a result of the significantly reduced benefits they will receive. "[N]ew residents from 16 states will find the benefit they receive for a family of three is less than half the Fair Market Rent for even a one-bedroom apartment in California." (Greenstein Decl., JA 89.) For example, a Texas family will receive only \$184 a month, see *Welfare Reform*, *supra*, at 35, while even "a typical eight-by-ten-foot, SRO hotel room in Skid Row rented for about \$240 per month [according to a 1986 study of Los Angeles County]." Wolch and Dear, *supra*, at 125. Thus, renting an

<sup>6</sup> In 1993, California thought that \$703 per month was necessary for a family of three (it sets its "need" standard at this level). (Greenstein Decl., JA 90.)



apartment will often cost more than new residents will receive even if they had no other expenses.

The thorough inadequacy of such income is apparent when one considers that even for a poor family which spends only half of its income on housing, "[a]n unexpected expense, even a small one, easily can [lead to] homelessness." Children's Defense Fund, *Leave No Child Behind: The State of America's Children* 37 (1992) [hereinafter "*Leave No Child Behind*"]. As Professor Wald explains:

As a result of decreased benefits due to the residency requirement, many families will not be able to afford rent in anything but the lowest quality housing. Moreover, those families who cannot afford even this rent will be forced to 'double up' with family or friends in crowded conditions, or to live in cars or vans. In addition, some families will become homeless.

(Wald Decl. ¶ 13, at 5).<sup>7</sup> The consequences are devastating. Children who live in substandard housing are often exposed to lead paint, and structural, electrical, and sanitation hazards including rats and lack of adequate plumbing. See *Leave No Child Behind, supra*, at 38; Wald Decl. ¶ 14, at 5; *Welfare Reform, supra*, at 9, 33. The Children's Defense Fund concludes:

A decent home is a basic anchor of family life. Without it, virtually every aspect of a child's existence is disrupted. In all key measures of health, nutrition,

<sup>7</sup> See also Greenstein Decl., JA 89 ("The reduced grants can be expected to force some newcomer AFDC families to move into overcrowded or substandard quarters, or even to become homeless, all of which can pose significant health and safety risks to residents, especially children."); *Welfare Reform, supra*, at 10, 34, 39; Wolch & Dear, *supra*, at 36. Cf. *Leave No Child Behind, supra*, at 35 (noting that between 1980 and 1992, the number of homeless children grew from almost none to 100,000 partly as a result of "a decade of inadequate government housing and income assistance for poor families").

and emotional and educational well-being, poorly housed and homeless children routinely fare worse than other children.

*Leave No Child Behind, supra*, at 35. See also Wald Decl. ¶ 14, at 5. Moreover, many are left without shelter at all. Cf. National Law Center on Homelessness and Poverty, *No Way Out: A Report Analyzing the Options Available to Homeless and Poor Families in 19 American Cities* 77 (August 1993) [hereinafter "*No Way Out*"] (reporting that San Francisco's 224 family shelter spaces served only 16 to 20% of homeless family members).

Inadequate housing and homelessness also frequently lead to family break up. See "Building Together—Housing, AFDC and Child Welfare," *Family Matters* (Center for Law and Social Policy, Washington D.C.), Spring 1994 at 4 [hereinafter "*Building Together*"]. The stress placed on families by poverty often destabilizes them leading to neglect and as a result to foster care. See "Foster Care Beats AFDC—Financially," *Family Matters* (Center for Law and Social Policy, Washington D.C.), Winter 1994 at 10-11. Moreover, "state agencies often view inadequate housing [itself] as a form of parental neglect and cause to remove or keep a child from his or her home." "Building Together," *supra*, at 4.<sup>8</sup> Finally, we note that because many homeless shelters accept women and children but not men, and because of numerical limits on each shelter's ability to accept individuals, homeless families often must split up to find shelter. See *Leave No Child Behind, supra*, at 38; *No*

<sup>8</sup> Cf. "Child Welfare—A System in Crisis," *Family Matters* (Center for Law and Social Policy, Washington, D.C.), Winter 1994, at 8 ("While every parent must provide supervision for young children, low-income parents must provide much more intense supervision because their environment is more dangerous. If a child . . . falls out of the window, the mother is usually blamed for neglect even though the incident could have been prevented by improving the quality of the housing.").



*Way Out*, *supra*, at 4, 78. In San Francisco, 75 percent of providers reported that families were splitting up to find shelter in the city. *See No Way Out*, *supra*, Table 2. A 1986 study by the National Black Child Development Institute discovered the inherent result: substandard housing or homelessness factored into 30 percent of foster care placements. *See Leave No Child Behind*, *supra*, at 38. Only six percent of the families were offered housing assistance as an alternative to having their children placed in foster care. *See id.* Moreover, because AFDC payments for each child are less than foster care payments, there is an incentive for families to leave children in foster care once they are there, according to a 1993 Congressional Research Service Report. *See "Kinship Care and AFDC," Family Matters* (Center for Law and Social Policy, Washington, D.C.), Spring 1994 at 16-17. *See also "Foster Care Beats AFDC—Financially," supra*, at 10-12.

In sum, California's reduction in benefits for new residents threatens their access to the basic necessities of life. It threatens their ability to find shelter, their health, their academic success and their emotional well-being. As a result, the *Shapiro* rule requires the State to demonstrate that it has a compelling interest in enforcing this law.

### C. The Absence of a Compelling Justification.

Petitioners have not demonstrated that the statute is necessary to further a compelling state interest. Their only arguments are that the statute will save money and (they imply without explicitly stating) that it will deter migration to California of persons who need AFDC benefits. *See* Pet. Br. 21-22. But *Shapiro* and its progeny explicitly hold that neither a general money-saving rationale nor an interest in deterring poor persons from migration into the state is constitutionally sufficient.<sup>9</sup> Since the only

<sup>9</sup> The Court has also held that deterring poor persons is not an acceptable rationale even as a means of "sustain[ing] the political

interests posited by petitioners in this case are ones this Court has already rejected as illegitimate, it follows that the law is plainly unconstitutional.

## II. SHAPIRO REMAINS GOOD LAW AND SHOULD NOT BE OVERRULED OR UNDULY RESTRICTED.

Rather than making a serious effort to satisfy the *Shapiro* standard, petitioners ask the Court to relax its scrutiny of laws disfavoring new state residents, even where "basic necessities" are at stake. They also contend that the Court should erect a kind of "safe harbor" allowing states to penalize new residents—to whatever extent and for whatever reason—as long as each new resident receives at least the level of benefits paid in his prior home state. These approaches should be rejected.

### A. The Court Should Not Read Into the *Shapiro* Doctrine a New Principle Allowing States to Disfavor New Residents As Long As They Match the Benefits Paid in Each New Resident's Prior State.

The approaches proposed by petitioners would not be justified even if this were a case of first impression, because the principles espoused in this Court's "right to travel" cases are both persuasive and extremely important. These principles ensure the existence of a unified Nation and prevent the creation of second-class citizenries. Overturning *Shapiro* and adopting petitioners' safe harbor concept would undermine these values.

The first core principle previously embraced by this Court is the notion that each individual has a right to choose where to live after considering the (fundamental) benefits each state provides, rather than having a right to choose where to live with state benefits removed from the calculus. The idea is that in a federal system in which states provide different types and levels of taxes and

viability of [a state's welfare] programs." *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 266 (1974).

benefits, each individual should be able to choose under which governmental scheme she wishes to live. As Justice Brennan explained in *Zobel*:

a State may make residence within its boundaries more attractive by offering direct benefits to its citizens in the form of public services, lower taxes than other States offer, or direct distributions of its munificence. . . . That is a healthy form of rivalry: It inheres in the very idea of maintaining the States as independent sovereigns within a large framework, and it is fully—indeed, necessarily—consistent with the Framers' further idea of joining these independent sovereigns into a single Nation.

457 U.S. at 67-68 (Brennan, J., concurring). See also *Shapiro*, 394 U.S. at 632; *Maricopa County*, 415 U.S. at 264.

The holdings of the right to travel cases are also based on the principle that an individual should not face "second-class citizenship" even for a year. If an individual moves from state X to state Y, and state X, unlike state Y, only allows citizens to vote for mayor but not city council, she should not be prevented from voting for city council in state Y. If state X does not provide money for special classes for gifted and talented students but state Y does, her children should not be prevented from entering gifted and talented classes in state Y. See *Zobel*, 457 U.S. at 64. This is especially true because if the Court allowed state Y to create such a caste system for a year, it could probably create such a system for two or five or ten years.

The creation of such second-class citizenship status for new residents would result in relative deprivation, making new residents worse off than they had been in their old state even if they received the same absolute level of benefits. More important, the increasing segmentation within states would undercut the idea of a unified nation

that is at the heart of the right of travel. As Justice Brennan explained:

if each State were free to reward its citizens incrementally for their years of residence, so that a citizen leaving one State would thereby forfeit his accrued seniority . . . then the mobility so essential to the economic progress of our Nation, and so commonly accepted as a fundamental aspect of our social order, would not long survive.

457 U.S. at 68 (Brennan, J., concurring). In order to avoid such a result, courts must assess whether a statute penalizes the right to travel by comparing new residents with long-time residents.

The appropriateness of this comparison is even more apparent after considering the alternative implicitly proposed by defendants. Defendants argue that California's statute is neutral because it leaves plaintiffs in the same position they were in before they moved. But this implies that any statute that puts plaintiffs in a worse position than they were in before they moved would penalize the right to travel. If this were true, then a Texas statute providing lower AFDC benefits than California would be considered to "penalize" Californians who moved to Texas (they would receive fewer benefits as a result of moving and hence would be worse off) even though they would receive the same benefits as other Texans. Thus, in order to avoid "penalizing" new residents for having exercised their right to travel, Texas would have to pay new Texas residents higher AFDC benefits than it paid to long-time Texas residents.<sup>10</sup>

<sup>10</sup> The Court correctly rejected use of such a baseline in *Dunn*. It explained that where a state has a higher age requirement for driving than a state from which an individual moved, this "is not a penalty imposed solely because the newcomer is a new resident; instead, all residents, old and new, must be of a prescribed age to drive." *Dunn v. Blumstein*, 405 U.S. 330, 342 n.12 (1972).



The reason such a result would be absurd is that the lower AFDC benefits provided by Texas would not have been enacted to punish Californians who moved to Texas any more than the hot summers in Texas would have been created to punish those who moved. Rather Texas' lower AFDC benefits would be one background consideration that a person might reasonably take into account in deciding whether to move. In contrast, a law that provided lower welfare benefits to those who moved to Texas than to long-time Texas residents would punish those who moved for choosing to move. Thus, it is only statutes that distinguish between new and long-term residents that "penalize" new residents for having moved. And it is such statutes that undermine the existence of a unified Nation and risk the creation of second-class citizens.

**B. Principles of *Stare Decisis* Argue in Favor of Continuing to Apply *Shapiro* with Full Force in This Context.**

In addition to their inherent importance, the principles articulated in *Shapiro* remain worthy of support because they have become a vital part of our constitutional tradition. Both the Court's application of strict scrutiny and its approach of comparing new and long-term residents have been followed in subsequent cases and are in consonance with decisions in other areas of constitutional law.

"Time and time again, this Court has recognized that 'the doctrine of stare decisis is of fundamental importance to the rule of law.'" *Hilton v. South Carolina Pub. Ry. Comm'n*, 112 S. Ct. 560, 563 (1991) (quoting *Welch v. Texas Dept. of Highways and Public Transp.*, 483 U.S. 468, 494 (1987)).<sup>11</sup> It follows that, "[a]lthough adher-

<sup>11</sup> See also *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989) (*stare decisis* provides a needed check on the "'arbitrary discretion'" of unelected judges) (quoting *The Federalist*, No. 78, p. 490 (H. Lodge ed. 1888) (A. Hamilton)); *Moragne v. State*

ence to precedent is not rigidly required in constitutional cases, any departure from the doctrine of *stare decisis* demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984); *Planned Parenthood v. Casey*, 112 S. Ct. 2791, 2808-09 (1992) (supplying examples of special justifications). In this case, petitioners have offered no "special justification" supporting a change in a doctrine that has been in place for 25 years.

To begin with, no aspect of the *Shapiro* rule has proved "to be intolerable simply in defying practical workability." *Casey*, 112 S. Ct. at 2808. In fact, this Court and others have applied *Shapiro* with little difficulty. Nor have any factual changes "robbed [*Shapiro*] of significant application or justification." *Casey*, 112 S. Ct. at 2809. Significant limitations on AFDC continue to constitute a deprivation of the basic necessities of life, see pp. 9-14 *supra*. Moreover, it is just as true now as it was in 1969 that distinctions between new and long-term residents will undermine the concept of a unified Nation in which citizens can move freely from state to state without losing their status as first-class citizens.

In fact, the only "special justification" petitioners and their *amici* even attempt to advance for overruling *Shapiro* is that it has been overtaken by subsequent constitutional developments. However, rather than being a "remnant of abandoned doctrine," *Casey*, 112 S. Ct. at 2808, as defendants contend, *Shapiro* remains a basic feature of our constitutional structure. The Court followed *Shapiro*

*Marine Lines*, 398 U.S. 375, 403 (1970) (*stare decisis* ensures continued "public faith in the judiciary as a source of impersonal and reasoned judgments"); *Vasquez v. Hillery*, 474 U.S. 254, 265-66 (1986) (Respect for precedent serves to ensure "that the law will not merely change erratically, but will develop in a principled and intelligible fashion. [It] permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.").



in both *Dunn* and *Maricopa County*. And, although the Court has not applied *Shapiro* directly since its decision in *Maricopa County*, this hardly demonstrates a retreat from *Shapiro*'s principles. Rather it demonstrates the degree to which *Shapiro* has become firmly embodied in the law, so that no case to which *Shapiro* squarely applies has presented itself to the Court.<sup>12</sup>

Nor is there any support for petitioners' position in the Court's most recent cases involving legal distinctions based on duration of residency. To begin with, in all three of these cases, *Zobel*, *Hooper*, and *Soto-Lopez*, the Court invalidated laws that disfavored newer state residents. It applied rational-basis scrutiny but explained that this was because it had no need to consider whether strict scrutiny was required. See *Zobel*, 457 U.S. at 60-61; *Hooper*, 472 U.S. at 618; *Soto-Lopez*, 476 U.S. at 913 (Burger, C.J., concurring in the judgment).

Moreover, even if these more recent cases could be read as mandating *only* rational-basis scrutiny of the laws there at issue, they still would not call into question the strict scrutiny applied in *Shapiro*. These laws involved disparities in the availability of relatively minor governmental benefits, not access to basic necessities or fundamental rights.<sup>13</sup>

<sup>12</sup> There is no basis for the suggestion that the decision in *Sosna v. Iowa*, 419 U.S. 393 (1975), upholding a durational residency requirement for access to a state's divorce courts, constituted a retreat from *Shapiro*. The Court there emphasized that the burden on individual interests (a delay in obtaining a final divorce adjudication) was far less severe than in *Shapiro*, *Dunn* and *Maricopa County*, *id.* at 406; it certainly did not amount to reduced access to a basic necessity of life. The state's interests were also greater and may even have been compelling. *Id.* at 407. They included an interest in protecting individuals other than the states' residents and the state itself (the spouse and children who continued to reside in a different state). *Id.* at 406-07.

<sup>13</sup> Thus, *Zobel* involved distributions of cash by the state government in annual amounts ranging from \$50 to \$1050 depending on years of residency. 451 U.S. at 57. *Hooper* involved a tax exemp-

For similar reasons, these cases hardly suggest that a state always acts constitutionally so long as it provides new residents the same level of benefits as they received in their former state. In invalidating the statutes at issue, the Court looked only at the states' treatment of new and old residents, without regard to how the new residents' treatment compared with that in their prior home states. Moreover, in each of these cases, the Court reemphasized that it is flatly illegitimate for a state to discriminate against new residents based on the view that the state may take care of "its own." *Hooper*, 472 U.S. at 623. See also *Zobel*, 457 U.S. at 63; *Soto-Lopez*, 476 U.S. 898 (Burger, C.J., concurring in the judgment). These cases thus hardly call for reconsideration of strict scrutiny of distinctions between new and long-term residents with respect to access to basic necessities.

At the same time, it is important to recognize that *Shapiro* stands as part of a long line of cases granting strict scrutiny to unequal provision of rights that are fundamental. See, e.g., *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (striking down penalty of sterilization applied to robbers but not embezzlers because procreation is a fundamental right); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 670 (1966) (striking down poll tax as unequal provision of the fundamental right to vote); *Griffin v. Illinois*, 351 U.S. 12 (1956) (striking down Illinois' refusal to furnish indigent defendants with free trial transcripts where state had granted a right to appellate review). The Court's careful protection of a right to travel that flows from the very nature of our Federal Union<sup>14</sup> is well within this tradition.

Indeed, it draws further support from other constitutional doctrines. For example, under the suspect-class

tion applicable to \$2000 of taxable property. 472 U.S. at 614. *Soto-Lopez* involved bonus points awarded in the scoring of state civil-service examinations. 476 U.S. at 900.

<sup>14</sup> See *Shapiro*, 394 U.S. at 627.

prong of the Equal Protection Clause, the Court applies heightened scrutiny to laws that discriminate against "discrete and insular minorities." *United States v. Carolene Products*, 304 U.S. 144, 152-53 n.4 (1938). The Constitution's special solicitude for such minorities supports application of similar solicitude for newcomers under the right to travel, because newcomers, and particularly poor newcomers, constitute just such a minority. Newcomers have been discriminated against historically, *see, e.g., Shapiro*, 394 U.S. at 628;<sup>15</sup> they remain a likely target of "pervasive discriminatory treatment on a wide range of issues"; they have "an easily identifiable membership . . . and the criteria [are] such that no significant number of the political majority run the risk of falling into the class in the future as a result of changing circumstances." *McCoy, supra*, at 1020-21. *See also* Stephen Loffredo, "If You Ain't Got the Do, Re, Mi": *The Commerce Clause and State Residence Restrictions on Welfare*, 11 Yale Law & Policy Review 147, 172 (1993) ("[P]oor people from other states present an irresistible target, being politically disabled as a result of both poverty and geography.").

The values animating the Privileges and Immunities Clause of Art. IV also bolster the Court's decision to give close scrutiny to distinctions between newcomers and long-time residents with respect to basic necessities. The Privileges and Immunities Clause "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Zobel*, 457 U.S. at 74 (O'Connor, J., concurring) (quoting *Toomer v. Witsell*, 334 U.S. 385, 395 (1948)). While it has been argued that the Clause does not technically

<sup>15</sup> *See also* Decl. of Michael Katz, JA 97 (explaining that California's residency requirement is a modern version of the "settlement" laws of Elizabethan England and early America which did not deter migration, which created significant hardships for families which moved, and which caused significant administrative problems for local governments as well as much expensive litigation).

apply to laws that discriminate against new *residents* because they are no longer citizens of other states, *see Shapiro*, 394 U.S. at 666 (Harlan, J., dissenting); *but see Zobel*, 457 U.S. at 71-81 (O'Connor, J., concurring), surely the existence of California citizenship does not render the underlying *purpose* of the Clause inapposite. This is especially true because most of those the law affects are citizens of other states who have not yet chosen to come to California.

The principles underlying the Commerce Clause also help justify the Court's right-to-travel jurisprudence. Under the Commerce Clause, state laws that burden interstate commerce because of its interstate nature are strictly scrutinized absent congressional authorization. *See, e.g., Hughes v. Oklahoma*, 441 U.S. 322, 337 (1979) ("At a minimum . . . facial discrimination invokes the strictest scrutiny . . ."). The baseline in Commerce Clause cases is similar to that in right-to-travel cases. A state may not disfavor commerce coming from out of state, as compared with purely intrastate transactions.<sup>16</sup> Among other values it serves, the Commerce Clause promotes a unified Nation in which states do not engage in a destructive competition against each other, and it precludes states from regulating against those who have no voice in state governance. *See Loffredo, supra*, at 193-99. The Court's right-to-travel jurisprudence similarly limits the ability of states to compete to fence out indigents and protects those outside the state who have no voice in state governance.

For all of these reasons, it is spurious to suggest that the Court should disregard principles of *stare decisis* in

<sup>16</sup> *See, e.g., Bacchus Imports v. Dias*, 468 U.S. 263 (1984). In *Bacchus*, the Court held that a Hawaii liquor tax exemption for two liquors made from Hawaiian grown plants burdened out of state liquors. In reaching this conclusion, the Court did not ask whether liquors imported into Hawaii were taxed at a higher rate than in their state of origin.



this case based on more recent developments in the law. There remains every justification for applying strict scrutiny to a law that penalizes new state residents by making them worse off than long-term residents with respect to their access to the basic necessities of life.

### III. EVEN UNDER A MORE RELAXED LEVEL OF SCRUTINY, THE CALIFORNIA LAW WOULD STILL BE UNCONSTITUTIONAL.

For all of the reasons already set forth, *amicus* believes that the law at issue here warrants searching constitutional scrutiny. But even if the Court were inclined to adopt petitioners' indefensible notion that only rational-basis scrutiny applies to laws matching the benefits provided to new residents with those from their old state, this law would still be unconstitutional. First, this law does not actually provide new residents the same level of benefits that they received in their former states. Second, the law cannot survive rational-basis review in any case.

#### A. The Statute Does Not Leave Recipients as Well Off as They Would Have Been in Their Former States.

California's statute is unconstitutional even under defendants' theory of the case. California's statute does not leave plaintiffs as well off as they were in the states from which they came, because California's cost of living is higher than in most states and California provides lower levels of non-AFDC benefits. In 1988, California housing prices were almost twice the national average and the difference was increasing. Wolch and Dear, *supra*, at 70. When California's AFDC levels are considered relative to housing costs in California, California benefit levels are near the middle rather than among the highest of the states. (Greenstein Decl., JA 87). "In fact, when the relative costs of housing are added into the calculation, families in 30 other states receiving AFDC and food stamps have more income at their disposal." *Welfare*

*Reform, supra*, at 11. Furthermore, "only about one in eight AFDC recipients in California receives any housing subsidy, compared to the national average of about one in four." (Greenstein Decl., JA 88). This fraction is the lowest of any state. See Wolch and Dear, *supra*, at 118; *Welfare Reform, supra*, at 11. Thus, California hardly seems likely to serve as a "welfare magnet." It does not need to provide lower welfare benefits to newcomers in order to prevent them from coming in search of high benefits. In fact, even setting aside the fact that California provides lower housing subsidies and food stamps than other states, it is clear that California's statute makes most newcomers who receives AFDC significantly worse off than they were in their former state. Robert Greenstein concludes that:

In all but one of the 46 states (including the District of Columbia as a state) in which AFDC benefit levels are lower than in California, the average statewide costs of modest housing are also lower than in California. This means that newly entered residents from 45 of these 46 states typically will face higher costs of living without any increase in their AFDC benefits to help meet those costs.

(Greenstein Decl., JA 88) (emphasis added). The district court agreed, finding as a fact that "the measure cannot fairly be said to provide the same payment as new residents could have received in the state of their prior residence since the cost of living . . . generally is much higher in California than elsewhere." *Green v. Anderson*, 811 F. Supp. at 521; see also *id.* at 521 n.13. Thus, even under defendants' reading of *Shapiro*, California's statute penalizes travel. As a result, it must receive heightened scrutiny under which it would be unconstitutional.

#### B. The Statute Lacks a Rational and Legitimate Basis.

Finally, we note that California's statute would be unconstitutional even under rational-basis review. California makes almost no effort to explain why its statute is more



rational than the ones struck down by the Court in *Zobel*, *Hooper*, and *Soto-Lopez*. Those cases make clear what is true for any law—when the state treats some people worse than others (even temporarily), it must have *some* reasonable explanation for why it is doing so. See, e.g., *Hooper*, 472 U.S. at 621 (rejecting the justification that New Mexico's statute eased the transition of veterans into civilian life because this purpose did not distinguish veterans who had been New Mexico residents from those who had not).

If California's assertion that its statute is necessary to save money refers to savings on welfare payments to persons *already in California*, the State has no basis for singling out new residents to meet this goal. See *Anderson*, 811 F. Supp. at 523 ("group of [new] residents is no better able to bear the loss of benefits than a group randomly drawn").<sup>17</sup> That is why the *Shapiro* Court stated that a State could never save money "by [drawing] invidious distinctions between classes of its citizens." *Shapiro*, 394 U.S. at 633. See *id.* at 633 n.11 (citing *Rinaldi v. Yeager*, 384 U.S. 305 (1966)), as having held that a New Jersey statute aimed at saving money lacked a rational basis because the classification it drew did not advance its money-saving rationale).

At times petitioners suggest that the goal was to *deter indigents from moving to California in the future*. See Pet. Br. 21-22. But, just as the purpose of rewarding a state's long-term residents remains constitutionally impermissible under rational-basis review, see pp. 8, 21 *supra*, the purpose of deterring migration remains constitutionally impermissible as well. Otherwise, *Zobel*, *Hooper* and *Soto-Lopez* would stand for the bizarre proposition that a state cannot take care of "its own" by favoring long-term

<sup>17</sup> In fact, at an intuitive level, those who have been completely uprooted are likely to need more money not less. Neither the state nor its *amici* advance any evidence to the contrary.

residents as a reward for their service to the state but it can do so in order to deter new residents from coming. Hence, this Court can decide this case simply by holding that California's statute fails even rational-basis scrutiny.

### CONCLUSION

The judgment of the United States Court of Appeals for the Ninth Circuit should be affirmed.

Respectfully submitted,

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